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ADMINISTRATION OF LAWS AFFECTING FARMWORKERS

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HEARING

BEFORE A

SUBCOMMITTEE OF THE COMMITTEE ON GOVERNMENT OPERATIONS HOUSE OF REPRESENTATIVES

NINETY-SIXTH CONGRESS

FIRST SESSION

NOVEMBER 13, 1979

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ADMINISTRATION OF LAWS AFFECTING FARMWORKERS

TUESDAY, NOVEMBER 13, 1979

HOUSE OF REPRESENTATIVES,
MANPOWER AND HOUSING SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:33 a.m., in room 2203, Rayburn House Office Building, Hon. Cardiss Collins (chairwoman of the subcommittee) presiding.

Present: Representatives Cardiss Collins, Andrew Maguire, and M. Caldwell Butler.

Also present: Joseph C. Luman, staff director; Richard Grawey, counsel; Sharon Smith, clerk; and Stephen Blackistone, minority professional staff, Committee on Government Operations.

Mrs. COLLINS. The Subcommittee on Manpower and Housing will come to order.

This is the first oversight hearing that we have had on the administration of the laws enacted to protect migrant and seasonal farmworkers. As we sit in this hearing room today, in November of 1979, it is appropriate to reflect that the often invisible problems of migrant workers were vividly brought to national attention 19 years ago with Edward R. Murrow's documentary, "The Harvest of Shame." Three years later, in 1963, Congress passed the Farm Labor Contractor Registration Act with the intent of correcting the abuses that had been the traditional lot of farmworkers.

The exploitation so often suffered by farmworkers has become notorious. They are often recruited on the basis of misrepresentations about the amount of work, type of work, rate of pay, and living conditions. Housing provided to them may be substandard, and expenses for meals and lodging so inflated that they have little to show for their work. Migrant workers, of course, are at a severe disadvantage when their work takes them far from their homes and from place to place on a temporary basis.

Under the 1963 legislation, persons who recruited, hired, or transported such workers were required to register annually with the Secretary of Labor. Proof of liability insurance on vehicles used for their transportation must be shown. Farm labor contractors were also required to inform workers of the conditions of their employment and to post in written form the terms of employment and housing, an important safeguard against hard-to-prove, misleading inducements.

Congress endeavored to erase the issue of worker mistreatment 5 years ago—in 1974—when it broadened the scope of the 1963 act and

strengthened the sanctions because, as the Senate report pointed out, it was quite evident that the Farm Labor Contractor Registration Act provided no real deterrent to violations. The Senate report on the 1974 bill stated that the Department of Labor was allocating only meager resources for the enforcement of this protective legislation.

For this and other reasons, the 1974 amendments extended the act coverage to farm labor contractors who operated in only one State and gave the Department of Labor the power to assess heavy civil money penalties for violations, some of which became subject to prosecution under strengthened laws—under strengthened criminal provisions, really. The Farm Labor Contractor Registration Act is the only law which specifically prohibits farm employers from hiring undocumented workers.

The purpose of this hearing is to learn from representatives of farmers, farmworkers, and the Department of Labor itself regarding the administration and enforcement of the Farm Labor Contractor Act, the Occupational Safety and Health Act, and the Wagner-Peyser Act as it relates to farmworkers. It is my hope that this hearing will provide current information about the working and living conditions of migrant and seasonal farmworkers, will reveal whether the protective legislation covering that population has been effective, and will enable us to determine whether the Department of Labor has used its resources in economic, effective, and efficient ways.

This subcommittee is aware of the current movement in the Senate to amend the act in a significant way and hope that these hearings will further congressional understanding of this important issue and assist in improving the effectiveness of Federal efforts in this area.

Mr. Maguire.

Mr. MAGUIRE. Thank you, Madam Chairwoman.

I want to congratulate you on holding these important hearings. Five years have passed since the law was strengthened, and I think it is time that the appropriate committee of the Congress have this kind of oversight hearing. I look forward to working with you on this very important matter.

Mrs. COLLINS. Thank you very much, and let me commend you for being the one who suggested that these hearings be held. As you told me, it was something that you learned about in your work as a Representative of your home State. You have very actively looked into this matter. You have expressed a great deal of interest, and it is because of you—let the record show—that we are having these hearings today.

I have just taken a look at the statements which are here. They are all very lengthy. Because we have a number of people that we would like to hear from today, let me advise each of you that your statements, in total, will be placed in the record as they have been written, and ask that you please, therefore, just give us a brief summary—no longer than 10 minutes—of the statement that you have written, in your oral testimony.

Our first witness this morning is Mr. Perry Ellsworth of the National Council of Agricultural Employers. I understand he is accompanied by some people he will introduce when he comes forth.

Please come forward.

Would you introduce those who are accompanying you, please?

STATEMENT OF PERRY ELLSWORTH, EXECUTIVE DIRECTOR, NATIONAL COUNCIL OF AGRICULTURAL EMPLOYERS, WASHINGTON, D.C.; ACCOMPANIED BY RODERICK K. SHAW, JR., COUNSEL, CITRUS INDUSTRIAL COUNCIL, ALLEN, DELL, FRANK, TINKLE, TAMPA, FLA.; AND ROY A. MYERS, C–B FOODS, ROCHESTER, N.Y.

Mr. ELLSWORTH. Madam Chairwoman, I welcome the opportunity to appear before this subcommittee today to discuss the oversight and to discuss enforcement of certain farm labor laws and regulations by the Department of Labor.

I am accompanied, on my immediate left, by Mr. Roy Myers of C–B Foods; and, at the end of the table, by Mr. Roderick K. Shaw, who is counsel to the Citrus Industrial Council and has his offices in Tampa, Fla.

Mrs. COLLINS. Thank you.

Without objection, your full statement will appear in the record.

Mr. ELLSWORTH. I understand that the two matters of concern to this subcommittee today are enforcement of the Farm Labor Contractor Registration Act and regulations governing housing for migrant agricultural workers.

When the Farm Labor Contractor Registration Act was in the process of being amended in 1974, the record will show that agricultural employer organizations made little, if any, input regarding the bills under discussion. This was because most of us, as we understand the legislation, though it was designed to tighten control over crew leaders, alternatively called farm labor contractors—those individuals who were middlemen or body-brokers, as the term has been used by others.

None of us had any objection to such action, and we agreed that there were numerous instances of crew leader abuses of the members of their crews, and we concurred in actions to prevent such abuses.

When the Department of Labor started enforcing the law, employers were shocked to find that, by the Department's interpretations of the act's definition of "migrant worker," every single agricultural worker, every farmer and rancher, and nearly every food processor in the country was considered to be a migrant worker, no matter whether such persons ever left their homes overnight to perform agricultural labor.

Individual farmers—small growers—were surprised to learn that, even though they were exempted from registration as farm labor contractor because they did their own recruiting and hiring, the Department of Labor held that one of their employees would have to register if that employee drove one of the farmer's vehicles to take other workers from the vicinity of the farmhouse to the field or orchard for the day's work. They were doubly surprised to learn that the farm vehicle used to transport such workers would have to carry insurance equal to that required of an interstate carrier such as Greyhound, even if the farm vehicle traveled 100 percent on farm lands or across farm fields or through farm orchards.

In one instance, successfully defeated, a compliance officer attempted to force the driver of a large field machine to register because

there were workers riding on it during the process of harvesting a crop.

Agricultural employers were astonished to learn that the Department of Labor interpreted the words, "on no more than an incidental basis," in such a way that "incidental" became "accidental." This was particularly surprising in light of the intent of Congress that the phrase apply to persons who utilized a limited portion of their time for recruiting, soliciting, hiring, furnishing, or transporting migrant workers.

Corporations have found that even though they are defined as "persons" in the act, they cannot act personally. Employers are intrigued by the fact that, although for the period including fiscal year 1977 through the first half of fiscal year 1979 a total of 5,061 citations were issued by the enforcers of FLCRA, only 260—or just 5.2 percent—were for substantive violations of the act where abuses were alleged to have occured.

Compliance officers of the Department of Labor are making FLCRA a law gone wild. There are several illustrations in my formal statement. Others will undoubtedly come to light during the question and answer period.

The Department witnesses may well say that many citations were countermanded by higher authority and no penalties assessed, but I submit that the mere issuance of a citation is a cause of much concern to the recipient and takes precious time from his regular duties by which he earns a living.

To further add to the uncertainties facing agricultural employers, the Department's interpretive regulations covering FLCRA have yet to be published, even though the act, as amended, will be 5 years old next month.

Mrs. COLLINS. Would you repeat that? I did not hear what you said.

Mr. ELLSWORTH. It is customary, after a law is passed or amended, that the Department of Labor either issue, in the case of a new law, its interpretive bulletin which explains it, or amends that interpretive bulletin. The bill was signed into law on December 7, 1974. We have yet to see the interpretive bulletin that would guide growers, employers, or even farmworker organizations in exactly what the Department of Labor believes the law says.

Mrs. COLLINS. Thank you.

Mr. ELLSWORTH. As a case in point, an employer organization presented 21 questions in writing to the Wage and Hour Division nearly 2 years ago and is still waiting for answers. Someone ought to discuss how to run a railroad with the Department.

The National Council of Agricultural Employers, on behalf of all agricultural employers, has just one request to make to this committee. Make the Department of Labor enforce FLCRA according to the intent of Congress or help employers obtain amendments so the act will do what Congress intended.

Now, in the area of farm labor housing, I would like to first admit that all housing is not as good as it should be. That is not quite perhaps the way it ought to be said. I would first admit that there is bad housing in places. There is very excellent housing in other places.

NCAE and other organizations have, over the years, encouraged their members to build housing to meet Federal regulations and to exceed those regulations if it is economically possible to do so.

Reference was made today to "Harvest of Shame." I would point out that this was a study which was conducted prior to 1963. I forget the exact date of the report. But over the past 10 to 15 years, there has been a dramatic improvement in housing across the land. Concrete block buildings and trailer homes are replacing wooden buildings and housing. Running hot and cold water and inside plumbing are the rule. The farm labor housing is very frequently inspected by local, State, and Federal officials, one following the other, and usually more than once during occupancy by workers.

On behalf of this Nation's agricultural employers who furnish labor housing, and most of it free, NCAE asks that the Department of Labor work out an arrangement whereby one agency—be it local, State, or Federal—does the inspection for all rather than having three or four persons arrive at different times during the farmer's busiest season.

NCAE also asks that a certain amount of reason be exercised by inspectors and that all concerned realize that violations are often not discovered the minute they occur and cannot be repaired in the next minute.

This is merely a very quick summary. My statement has, I trust, been made part of the record, and we stand ready to answer any questions.

Mrs. COLLINS. Thank you very much, Mr. Ellsworth.

I found it pretty interesting, just in glancing through your overall statement, that you mentioned something about the total citations issued, only 260 or 5.2 percent of which were for things that were really important—such as misrepresentation of workers, knowingly hiring an illegal worker, improper money payments, improper charges for workers' purchases, housing and health standards violations. I guess the ones for housing and health standards violations were the second largest number of citations issued, second only to knowingly hiring illegal workers.

On the question of housing, I understand, just from speaking to staff, that overall the housing is pretty lousy. You mentioned that there is some good and some bad, but the norm, I guess, is just not that good.

What has been done to improve the housing in the last 5 years?

Mr. ELLSWORTH. As I said earlier, we have had many farm housing facilities rebuilt. OSHA has come into the picture and has enforced the improvement of housing. I think we have to back off, and I respectfully take exception with you about housing being very lousy, as a general statement.

Mrs. COLLINS. Tell me why you would take exception to that.

Mr. ELLSWORTH. You may take exception to my saying all housing is very excellent.

Mrs. COLLINS. We would like the record to show why it is contrary to what I have stated.

Mr. ELLSWORTH. I have no statistics to prove this point, but let me call on Mr. Myers who is just in the process of building housing for migrant workers in his facility—one of his facilities—and let him ex-

plain to you what he is doing, which I think is indicative of what is happening, and the costs his company is going to incur.

Mrs. COLLINS. Is he really indicative, or is he one of the few who are making these kinds of changes?

Mr. ELLSWORTH. I am very serious about this. I have no statistics to prove it one way or the other, but I think housing is going on an upward curve of improvement across the country.

Mrs. COLLINS. Mr. Myers?

Mr. MYERS. We are building new housing. We started changing our housing back in 1965 or 1966—updating it. As of 1975, it cost us approximately $1,000 a worker to build new housing. This included the cafeteria facilities and recreation facilities for them.

We currently have bids in for housing that is going to be built starting in January. That will run us $3,000 a man without cafeteria facilities, and cafeteria facilities will probably bring that up to close to $4,000 per person.

These are concrete block construction facilities with dormitory-type sleeping quarters, with laundry and bathroom facilities and heating facilities in the corridor of the building.

I, too, would agree with Mr. Ellsworth that I think housing, in general, has improved greatly in the last few years.

Mrs. COLLINS. What percentage do you think meets the required standard, Mr. Ellsworth?

Mr. ELLSWORTH. I have no idea about an exact percentage, but I would say it is the great majority.

Mrs. COLLINS. You cannot give a rough percentage? Your National Council of Agricultural Employers does not accumulate that kind of data?

Mr. ELLSWORTH. No, ma'am. We have not accumulated data as to what housing meets these standards.

Mrs. COLLINS. There is a list, on page 19 of your statement, of what you term substantive violation, including failure to abide by agreement with workers and discrimination against workers who are exercising their rights. Do you think that the fines presently levied for those offenses are severe enough?

Mr. ELLSWORTH. I think $1,000 for discrimination against a worker that is exercising his rights is probably a pretty stiff penalty for a great many employers and will result in their thinking twice before they take any such action again.

Mrs. COLLINS. What about some of the other penalties that are levied? Do you know about any of those? Do you know of any cases where there are people who were given criminal penalties?

Mr. ELLSWORTH. No, I do not. You would have to get that from the Department of Labor. I do know this, that there have been employers who have been inspected by compliance officers for FLCRA who have had citations issued against them which, if the penalties were levied—and there is sometimes a decision by the Department of Labor not to issue penalties once they investigate the particular situation—have gone as high as $24,000, $30,000 to $40,000 in just the result of one visit. That is a pretty substantial deterrent or convincer, I would think.

Mrs. COLLINS. On page 7 of your statement, you quote an article that says that the intent of Congress was to control the farm labor

contractor. You make the point again on page 19. Are not migrants also abused by some growers, packers, and large corporations?

Mr. ELLSWORTH. I suppose that, on the basis of which your statement was made, ma'am——

Mrs. COLLINS. My statement was made on the basis of yours.

Mr. ELLSWORTH. I could not say there has never been a farmworker abused by a large corporation or by packers. We would first have to define "abuse," and so on. But let me say that I think, in many cases, as is evidenced by the statistics here, in that period of time, the ones I tried to write down were ones where there were fines assessed because of actions or citations issued because of something which was determined to be an abuse.

Mrs. COLLINS. Is it your understanding that the act is aimed at controlling abuses wherever they might occur, or by whomever?

Mr. ELLSWORTH. According to my understanding of the act, it is to control abuses which may be caused by farm labor contractors—those who meet the definition of "farm labor contractors."

Mrs. COLLINS. Nobody else?

Mr. ELLSWORTH. Not under this act, ma'am.

Mrs. COLLINS. That is your understanding?

Mr. ELLSWORTH. Yes, ma'am.

Mrs. COLLINS. All right. We will get back to that a little later.

Mr. Butler?

Mr. BUTLER. Thank you, Madam Chairwoman.

Just as a point of reference, Mr. Ellsworth—and we do appreciate your testimony—when did this committee receive the statement which you refer to as your formal statement?

Mr. ELLSWORTH. They got it up here last night, sir. That was by reason of the fact that I learned about these hearings a week ago, Friday, I have a very, very small office, and was pushing to get it done.

Mr. BUTLER. Is it your feeling that you have not had adequate time to prepare your testimony?

Mr. ELLSWORTH. In my case, it pushed me. That is not to say that somebody else might not have been able to do it all right.

Mr. BUTLER. I am sure we are all anxious that you get your full story in the record.

I am sure, Madam Chairwoman, we would have no objection to his supplementing his testimony?

Mrs. COLLINS. Not at all.

Mr. BUTLER. That is right.

I do think that it is a legitimate complaint if you only get a week's notice of a hearing.

Mrs. COLLINS. That is true.

Mr. BUTLER. I am sympathetic with what you are talking about here today. I want to understand, however, what is so difficult about registering. Explain that to me.

Mr. ELLSWORTH. May I ask Mr. Shaw to answer that question, sir?

Mr. SHAW. Mr. Butler, registration is only one of the many problems under the act. Our understanding of what Congress intended to do was to protect farmworkers who were being abused—who were migrants.

We have many problems with the act which cause a number of citations to be issued, having to do with the question of who is and who is

not required to register. These cause enormous problems in the agricultural industry. We have, for example, three tractor drivers, each of whom are tractor drivers, who all work 12 months out of the year. They have lived in the locale all their lives. None is the superior of the other two. There are three ways they can get to the field. One is, each can drive his own vehicle; a second is that two of them can ride with the other, either in a vehicle owned by one or in a vehicle owned by the employer; the third is that they can drive all three tractors back and forth each day.

In a court case in Florida, three tractor drivers who ride together in order to save fuel, in a pickup truck, are told that the one who drives the pickup truck has to register.

It is not impossible for that tractor driver to go out and register, obviously. But it boggles our mind that he should be asked to do so when there is absolutely no abuse or potential abuse involved, that we can envision.

As we read the legislative history, there were a number of kinds of abuses that the Congress was legitimately concerned about. One of the foremost was the opportunity for skim, where moneys were paid in cash to a crew leader for the entire operation, and the crew leader thereby had the opportunity to skim off more than his legitimate costs. That was a concern that Congress had.

This attempts to deal with that. It overreaches in some of the ways that the Department has interpreted it. We think there should be incentives provided to encourage employers to cause all workers to become their own employees, first of all; and, second, to encourage them to pay each worker directly by check rather than paying off in cash to someone who would thereby have an opportunity to skim; to encourage them to disclose on the check, as in 6(c) of the act.

Mrs. COLLINS. Would the gentleman yield?

Mr. BUTLER. Certainly.

Mrs. COLLINS. What kind of incentives would you suggest?

Mr. SHAW. For example, in 6(e), the third from the last sentence talks about disclosing to the worker, in writing, at the time the payment is made, how much was paid to the farm labor contractor on an account, either on behalf of the worker, which is the situation where the employer or user pays cash, part of which really belongs to the workers and not to that farm labor contractor; and, second, on account of the labor of the worker. That is a nebulous concept which I will not argue with here because I am not sure exactly what it means, but presumably it means the part of what the contractor receives on account of what the worker did, as distinguished from what he received on account of his need to pay for workers' compensation insurance, liability insurance, social security, and that sort of thing.

The incentives that could be granted in 6(c), and ones we have suggested before, would be to provide that, if the employer—the user—caused the workers and the farm labor contractor to become employees—not a loophole but an actual change—and bring them into the mainstream of Americans, and actually paid those workers directly by check—if that was done so that the farm labor contractor never had the opportunity to get his hands on any part of that worker's money, so there would be no opportunity for skim, under those circumstances,

the need to comply with the disclosure to the worker how much the contract would be could be eliminated.

I am not suggesting that we eliminate the part that requires the employer to disclose how many hours were worked or how many fields were picked—we can do that on computers. We can do that. The difficult thing we run into is the emotional things involved in disclosing how much a farm labor contractor gets.

A meaningful way to do it is to disclose the rate, but oftentimes farm labor contractors do other things.

We can make all that move by encouraging the employer to pay directly by check. If he does that, then this requirement is eliminated. If he does not do it, keep it in the bill. Just put a caveat in.

Mrs. COLLINS. Thank you.

I thank the gentleman for yielding.

Mr. BUTLER. Mr. Ellsworth?

Mr. ELLSWORTH. That looks like an end run around your question. I am sure Mr. Shaw did not intend to do it that way.

Let me point out some one, two, three's, for you. One, if considered a farm labor contractor, as this act is interpreted by the Department of Labor, a farmer or his employee would have to engage in, first off, registration and being fingerprinted. Secondly, every year he has to renew that registration. Every 3 years he has to be refingerprinted. Fingerprinting facilities are sometimes a distance from farms where farmers work during the day when the fingerprinting facilities are usually open.

He would then have to abide by all of the requirements placed against a farm-labor contractor. I will only mention two in passing because we do not oppose the idea of disclosing to workers at the time they are hired, in writing, what the terms of employment will be.

But he is then prohibited from hiring any undocumented workers or, as the act refers to them, "illegal workers." This, of and by itself, is not a bad thing, and we are encouraging our members to take every step to avoid hiring undocumented workers.

On the other hand, in this case, let us suppose that this person has to register as a farm-labor contractor. He then has to engage in an exercise of positive identification of the citizenship of each and every worker, or the legality of that worker to work—if he has an INS "green card."

This is very interesting because, as employers, we were clobbered the other day at a hearing before the Select Committee on Immigration and Policy by a crew leader because a farmer refused to hire the crew leader because she did not have the positive identification. So, it is catch 22 there.

The other thing that is very interesting is this. A farm-labor contractor, under this act, must disclose to the workers how much money he earns as a result of those workers' labors.

There is, in Pennsylvania, at the Musselman Co., an instance where the personnel director has been required to register as a farm-labor contractor. Our question has been: How much does he earn as a result of the labor of those "migrant workers" that he has hired? How much does he disclose? He is a year-round employee; he is on a salary.

Mr. BUTLER. You are citing difficulties in complying with the supposed requirements?

Mr. ELLSWORTH. What happens when somebody gets hooked on this, and why do people think they are not farm-labor contractors in the first place? It is almost like people who think making everyone who drives a car should register as a licensed cab driver because he might, at some time, carry somebody for a fee.

Mr. BUTLER. Thank you. I appreciate your putting that in the record.

Madam Chairwoman I know I am going over my time. If you want me to yield back, I will or perhaps I could go to another series of questions.

Mrs. COLLINS. Let us go to Mr. Maguire and then come back to you.

Mr. Maguire?

Mr. MAGUIRE. Thank you, Madam Chairwoman.

Gentlemen, I find myself puzzled by the approach to this which appears to start at the end of the issue that relates to entities rather than at the aspect of the issue that relates to abuses.

As I undersand it, the 1974 amendments were designed to plug what were, after the testimony was received in 1974 by the Senate committee, perceived to be rather serious loopholes in the law. The word "personally," for example, which you describe in your written statement as having been inadvertently added to the law, as I understand it, was the only change that was made in that section of the law at that time. It was designed, according to testimony that was received by the Senate committee, to deal with a serious loophole which allowed certain kinds of entities—in fact, very major entities—to be outside the purview of the law.

Do I understand your position correctly that you want certain entites to be exempt from the law that relates to abuses and certain other entities not to be exempt?

Mr. ELLSWORTH. I am going to let Mr. Shaw follow up on this one, if I may, because I think, Mr. Maguire, equity under the law has always been something which anybody should approve.

Our main point, I guess, is that at the time of these hearings, the Labor Department, for instance, testified that with the 1963 law they had succeeded in registering only 2,000 crew leaders and that they had reason to believe there were as many as 6,000 crew leaders, either in total or not registered—I forget which.

The law was to tighten up on that, and that is why it was changed in many respects to go from interstate transportation of 10 or more to the present definition of a "farm-labor contractor." The term was still used in those days. The colloquy on the House and Senate floors and the reports of the Senate and House committees at that time make constant reference to "crewleaders"—the middlemen, the ones who according to the statement, abuse both workers and who abuse growers by failing to show when they are supposed to show, and so on. You have read that material, I am sure—it is in there.

I think our big problem is that that was the direction that Congress intended the law to take—to get at these people. And the interpretations of it have since changed.

Mr. MAGUIRE. That was perhaps one of the directions.

Clearly, the interstate loopholes were something they wanted to plug, so that more people who were abused, in fact, were actually cov-

ered. And the insertion of the word, "personally," in the law at that point seems to have resulted from the kind of testimony that was received, for example, from State officials who urged that all corporate recruitment activities be required as well. For example, the Wisconsin Department of State Industry, Labor, and Human Relations suggested to the Congress that, "all recruiters, such as the agriculture-related food industry, canneries, packing shed workers, poultry processing plant, ginners, and so forth" be covered.

Against that background in the record, what basis would you have for making the argument that the word, "personally," was inadvertently inserted into the law in those amendments? Do you have any basis for that?

Mr. ELLSWORTH. I would like to have Mr. Shaw answer that question for you, if it is all right with you, sir.

Mr. MAGUIRE. All right.

Mr. SHAW. The legislative history, as disclosed in both the Senate and House committee reports, Mr. Maguire, talked about the middleman between the farmer and the worker; they talked about the emergence of the farm-labor contractor who comes out differently from what we find in commerce and industry generally, meaning a person who intervenes in the middle so that the employee cannot any longer under that system look directly to his employer.

They list the kinds of abuses they were concerned about on page 2 of the committee report of the Senate. They list those abuses as exaggerating conditions of employment. They are talking about the middleman who does that, not the employer.

Mr. MAGUIRE. But you see, the point is this. Let me interrupt. I have read your written presentation on this point

Mr. SHAW. I did not prepare that statement.

Mr. MAGUIRE. Whoever it is, the thing that bothers me is that, from the point of view of a migrant laborer or potential migrant laborer who interacts with a person who represents to him or her that certain conditions of employment will be available at such-and-such a location, it does not much matter to that person whether this "middleman" is in some legal sense a middleman of the sort you are describing, for example, not permanently employed by XYZ Corp., or, on the other hand, whether that person is employed by YZ Corp., either to do this kind of thing all the time or a portion of his time. It does not matter to the farmworker what the circumstances of that person's legal relationships are. What matters is whether or not the worker is going to be protected in relation to the representations that have been made.

You say in your statement that there is less likelihood—I am paraphrasing—that companies of the sort that you represent are going to be engaged in these kinds of abuses, that people can take them to court, and so forth, and so on. But there have, in fact, been rather significant examples of very serious abuses which, if your language were to be inserted in the law or the changes you have suggested were to be made—"personally" being taken out—would not be covered under the law.

I wonder, in that connection, if you have any comment on the *Abraham* v. *Beatrice Foods Company* case of 1976 or the *Owatana Canning Company* case of 1976, which are frequently cited on the

other side of the argument. Do you have any comment on either of those?

Mr. ELLSWORTH. No, sir. I happen to have a copy of what I think you are looking at, and that is the first time I was aware of those cases.

Mr. MAGUIRE. These involve major companies that fall within the purview of your organization, do they not?

Mr. ELLSWORTH. I am not trying to evade your question, but I am not sure whether they do or do not. Owatana Canning Co. is a member of mine now. It became a member approximately a year and a half ago.

What you have said thus far is something with which we would not argue. There have been abuses. I have tried to not sit here and say there have been no abuses by corporate entities. I think what we are saying is that this law, as enacted and as amended, was aimed at getting crew leaders and middlemen. There are other laws that cover the corporations.

In the case of specifying the terms of employment, it does not. I will buy that.

Mr. MAGUIRE. Yes. It depends exactly what you are talking about. For example, there may be certain standards with respect to worker housing under OSHA, but you cannot, as an individual person, take somebody to court that because you do not have standing under OSHA law, as I understand it. The only thing that gives you a right to go after somebody on the housing issue is, in fact, this farm labor contractor law.

So, if a whole category of entities is going to be excluded from coverage by the changes that you advocate, then we have to deal with the problem of how people are going to be protected.

Mr. ELLSWORTH. Under OSHA, sir, anybody can complain to OSHA about the housing, and OSHA will come out and can assess rather substantial penalties. The point is that the money paid will go against the employer, and an employee does not have redress, as such, to obtain court action. I would agree with that one.

Mr. MAGUIRE. Madam Chairwoman, I am aware that I am absorbing a good deal of time here, but let me try to conclude. There are so many things to talk about.

Let us take the issue of "personally" again as an example of what you are advocating. You also want some other changes in the law which we do not have time right now to go into. But if you were to succeed in eliminating that word—and this is the paragraph about the definition of a farm labor contractor, the people who are going to be covered by the law—it would then read, "such terms shall not include any farmer, processor, canner, ginner, packing shed operator, or nurseryman who engages in any such activity for the purpose of supplying migrant workers solely for his own operation."

In other words, OK, they are migrant workers. We have agreed at the start that that is what they are. But then we go on to say that they shall not be protected as long as somebody is engaging them solely for their own operation. Is that what you are asking this Congress to approve?

Mr. ELLSWORTH. I think there are several things that we are pointing out are fallacies in this legislation.

To go back to one other thing, sir, we have talked about migrant workers——

Mr. MAGUIRE. I would like you to focus on that question.

Mr. ELLSWORTH. All right. I am with you.

Migrant workers are—I do not know how you think of the term when you use it, but it is not the lady next door. But this act would include that. Thus, an organization cannot recruit local workers solely for its own operation. Not every organization in this country uses workers who have migrated to come to work for it. So, the term, "migrant worker," has to be very carefully defined.

Under the Department of Labor's interpretation of it, it is every employee who is ever hired, and we question that.

Mr. MAGUIRE. But the definition of a "migrant worker" is another question.

Mr. ELLSWORTH. Except that it focuses on this one.

If we could take out the word, "personally," in there, we would allow, for instance, an employer, who, at the present time will personally recruit workers, personally hire them, personally pay for their transportation to his operation, and then under this act, as worded with "personally," "must personally transport those workers everyplace on the farm."

Mr. MAGUIRE. If I may just interrupt—it is to exempt the family farm. That is what the current law is attempting to do. But you are trying to exempt anybody who hires people that you and I would both agree are migrant farm laborers as long as the migrant farmworkers are going to be working within this operation, no matter how big it is, no matter how far away it is, no matter how many migrant farm laborers are there, for no matter what period of time.

If the change you are advocating were to be approved, everybody in that category would be exempt from this law; and that is, in fact, what you are asking for?

Mr. ELLSWORTH. Yes, sir.

Mr. MAGUIRE. I do think there is a tremendous burden of proof, then, that is placed upon you with respect to whether or not that is wise legislating on our part. It certainly seems to me that abuses are what we ought to be focusing on rather than entities. If there are no abuses, then obviously your people do not have to worry. If there are abuses, then we had better have them covered, I would think.

Perhaps you say, "Well, the paperwork is burdensome." But I think that gets us into another line of inquiry as to whether it really is all that burdensome. You have to keep payroll records anyway; you have to have insurance; you have to do a lot of different things regardless of how this law works.

Mr. ELLSWORTH. But my farm may be in a State that has mandatory workers' compensation insurance at the present time; yet, if one of my employees is forced to register as a farm labor contractor by virtue of the interpretations of this act, I then have to carry this additional ICC insurance on all vehicles, regardless of size and so forth. This, then, is an additional monetary burden which becomes pretty great.

But, sir, my testimony today and my presentation today was to talk about the oversight of the enforcement of the act by the Department of Labor, not the amendments.

Mr. MAGUIRE. But I do think the amendments are pretty important, since we are faced with that question.

Mr. ELLSWORTH. I would welcome the chance to have hearings on the amendments.

Mr. MAGUIRE. I think I had better subside for the moment, Madam Chairwoman.

Mrs. COLLINS. We will go back to Mr. Butler and then return to me and you.

Mr. Butler.

Mr. BUTLER. Thank you.

I hope the gentleman does not disappear. I think you have put your point that there is a pretty basic kind of cleavage in the country. What you are saying is that there may be some problems, so we regulate everybody. What you are saying is that you do not need to regulate this much because there are others doing the same job.

Basically, if we took your interpretation, would that leave the migrant worker who is employed directly by the farmer defenseless?

Mr. ELLSWORTH. No, sir. I think there are numerous instances already, and we expect them to increase in the future, where the migrant legal worker organizations and farmworker organizations are coming into the picture. They are able to call the attention of the corporate agencies to abuses to farmworkers.

Mr. BUTLER. I want to catalog the appropriate agencies.

Mr. ELLSWORTH. If it is housing, they could go to OSHA. If it is underpayment of wages, they could go to the Fair Labor Standards Act.

Mr. BUTLER. And for health conditions, they would seek local help?

Mr. ELLSWORTH. You can get them through that or through the State or county.

Mr. BUTLER. Also, of course, the access to these services is being improved with the Legal Services Corporation, and I think we are going to hear some more about that later.

Let me now turn to this question. On page 12 of your testimony, as we are addressing ourselves to the administration of the act, you say, "On January 4, 1978, Charles Kelso, counsel for the Florida Fruit & Vegetable Association, wrote to the U.S. Department of Labor posing questions regarding FLCRA compliance. To date (nearly 2 years later), Mr. Kelso has not received a reply to his questions. How can anyone give guidance to clients or members under such conditions?" And you attach to your statement a copy of Mr. Kelso's letter of January 4, 1978.

There are a number of questions here. I now ask you, have you yet received a response to these questions?

Mr. ELLSWORTH. I called Mr. Kelso and talked with his secretary yesterday, and she said that no response had been received.

Mr. BUTLER. Madam Chairwoman, we have the Department here today.

Mrs. COLLINS. Yes. And that is a question we will certainly want to ask them today.

Mr. BUTLER. Would it be fair to warn them now that we are going to ask them what the responses to these questions are and why they have not responded?

Mrs. COLLINS. Yes, sir.

Mr. BUTLER. OK. That is what I am going to do, and I think I will save my time for that.

Mrs. COLLINS. All right.

I have just a couple of questions, Mr. Ellsworth.

First, how many migrant worker camps does your association estimate there are now?

Mr. ELLSWORTH. I have no idea. Maybe one of these gentlemen does.

Mr. SHAW. I have no idea how many there are.

Mr. MYERS. I have no idea.

Mrs. COLLINS. I find it strange that you do not have any idea how many worker camps there are. Would it be possible for you to get that information for us through your regular operations?

Mr. ELLSWORTH. Madam Chairwoman, my membership is not all inclusive of all employers that operate labor camps. Therefore, I have a problem getting beyond that. We could make an effort to try to get that information; I cannot promise it would be forthcoming early.

Mrs. COLLINS. How many camps are there within the members of your association? Perhaps you could answer that.

Mr. ELLSWORTH. I do not know.

Mrs. COLLINS. That would not be too difficult for you to get, would it?

Mr. ELLSWORTH. If all my members were to respond, I could get that.

Mrs. COLLINS. Could you possibly get that for us?

Mr. ELLSWORTH. I can give it the old college try.

Mrs. COLLINS. All right. Thank you.

Also, I would like to know, of that same group, roughly how many crew leaders there are and how many migrants they use.

Mr. ELLSWORTH. Will you define the term, "migrant," as you mean it, please?

Mrs. COLLINS. I think you know what migrants are. I think we all do.

Mr. ELLSWORTH. All right.

Mrs. COLLINS. Without objection, that information will appear in the record at this point.

[The material follows:]

NATIONAL COUNCIL OF AGRICULTURAL EMPLOYERS
237 SOUTHERN BUILDING • 15th and H STREETS, N.W.
WASHINGTON, D. C. 20005 (202) 628-8650

January 16, 1980

Mrs. Cardiss Collins, Chairwoman
Subcommittee on Manpower and Housing
Committee on Government Operations
B-349A Rayburn House Office Building
Washington, D. C. 20515

On November 13, 1979, Mrs. Collins,

your Subcommittee held hearings regarding the enforcement of farm labor laws by the U. S. Department of Labor. During that hearing you asked that NCAE attempt to obtain answers to the following questions:

1. How many migrant labor camps are operated by NCAE member employers in 1979?

2. How many crew leaders are hired by NCAE members in 1979?

3. How many migrant workers are hired by NCAE members in 1979?

We sent out a survey form on November 14, 1979, to obtain the requested information. Not being experts in conducting surveys or analyzing data, the answers are based on the following:

Responses received: 230

Number of migrant labor camps operated: 589

Number of crew leaders hired: 577

Number of migrant workers hired: 17,504

In reading these statistics, one must keep in mind that the numbers are reflective of duplications. For instance, a crew leader may have worked for six different employers (south to north) during the year. If all six employers responded to our survey, that one crew leader would be counted six times. The same would apply to migrant workers.

Perhaps a better estimate of the approximate number of crew leaders would be the testimony given by the U. S. Department of Labor in 1974 during hearings which led to amendment of the Farm Labor Contractor Registration Act. At that time the USDL witness stated that there were

an estimated 6,000 crew leaders in this country.

In an attempt to get national data regarding the number of migrant labor camps, we learned that the USDL Employment and Training Administration's U.S. Employment Service had gathered data which was forwarded to OSHA several years ago and is apparently lost.

There is no way we can "factor" the results we obtained to give either NCAE member-wide or national statistics to answer your questions.

Perhaps, one of these days, NCAE will develop a statistical capability and get such information, but it does not now exist.

Sincerely,

Perry R. Ellsworth

Perry R. Ellsworth
Executive Vice President

PRE:ta

Mrs. COLLINS. My final question is this: It is my understanding that the law, as it stands now, requires written disclosure of the contract, if you want to call it that. Is that right?

Mr. ELLSWORTH. Conditions of employment—yes.

Mrs. COLLINS. OK.

On characteristic of this industry, as I understand it, is that the recruitment of workers is away from a site. Is that right?

Mr. ELLSWORTH. I would say that in the majority of cases that is true. It may be that the crew leader will call an employer, and the employer will talk to the crew leader long distance.

Mrs. COLLINS. But usually it is away from the site?

Mr. ELLSWORTH. Yes.

Mrs. COLLINS. My question, then, is: How would the migrant be protected against all misrepresentations of wages and working conditions by a corporate recruiter if it were not for the written statement? It would be impossible. Would he not be forced to try to prove an oral contract sometime later, if that were the case?

Mr. ELLSWORTH. As I said earlier, Madam Chairwoman, we have no objection to written job conditions.

Mrs. COLLINS. All right.

Mr. ELLSWORTH. There is nothing like a piece of paper to prove your point.

Mrs. COLLINS. If the law were changed as you would like to see it changed, would there still be a required written disclosure?

Mr. ELLSWORTH. Not under the act as presently written—no—but I think that could be something we could work out.

Mrs. COLLINS. Thank you.

I have no further questions at this time.

Did you have something you wanted to add, Mr. Shaw?

Mr. SHAW. If I may, Madam Chairwoman. I just want to put in focus our primary thrust.

If we assume just for the moment that 99 percent of the abuses are caused by crew leaders, which is the assumption that I think the hearings went on in 1964 and 1974, and 1 percent by corporate, if that is correct, then with the limited manpower available, we can do far, far more for the worker by concentrating the enforcement in the direction of the thrust of the act, at the crew leaders who are responsible for 99 percent of the abuses, instead of wasting a lot of time on the 1 percent that could conceivably occur elsewhere. In the whole mainstream of America, this is the only act that I know of that requires employers or users to register as a precondition to employment of workers.

If it is needed here, why is it not needed anywhere else? Obviously, the answer is because the abuses have not been bad enough to justify it. If that delineation is going to be made based on where the principal abuses occur and are likely to occur, it should be made within as well as without the act.

We urge this committee to seriously consider a rethrusting of the act to direct the focus of it primarily at where the greater potential for abuse lies and away from those areas where they do not lie by creating incentives, Mrs. Collins, to cause employers and users to bring the workers into the mainstream rather than go through the crew leader route.

Mrs. COLLINS. Let me say this. This subcommittee is interested in getting at the problem and hopefully offering some suggestions on how the problem can be eased. We are not out to cause hardship to any of the people who are parties to a migrant contract, the migrant workers, or anyone else. We want to determine through our hearings the best possible solutions to eliminate some of these abuses from whatever the sources of those recommendations are going to be.

We hope, and we plan, to be fair and evenhanded. I am not sure that this is going to be the only hearing we have on the subject. As a matter of fact, I suspect this is going to be the beginning of a number of hearings. But be assured that this subcommittee will deal with the matter as it sees it.

Thank you very much.

We are running very short of time, and we do need to get to our other witnesses, if you please.

Mr. ELLSWORTH. Fair enough.

Mrs. COLLINS. Thank you.

[Mr. Ellsworth's prepared statement follows:]

STATEMENT

of

PERRY R. ELLSWORTH, EXECUTIVE VICE PRESIDENT
NATIONAL COUNCIL OF AGRICULTURAL EMPLOYERS
Washington, D.C.

for the

SUBCOMMITTEE ON MANPOWER AND HOUSING
HOUSE COMMITTEE ON GOVERNMENT OPERATIONS
November 13, 1979

I welcome the opportunity to appear at this oversight hearing to discuss the enforcement of certain farm labor laws and regulations by the U.S. Department of Labor.

I understand that the two matters of concern to this Subcommittee today are enforcement of the Farm Labor Contractor Registration Act (FLCRA) and regulations governing housing for migrant agricultural workers.

FARM LABOR CONTRACTOR REGISTRATION ACT

The Farm Labor Contractor Registration Act came into existence in 1963. At that time, it covered persons who transported ten or more agricultural workers from one state to another. In 1974 the Act was amended (P.L. 93-518) to include within the definition of farm labor contractor "any person, who for a fee, either for himself or on behalf of another person, recruits, solicits, hires, furnishes, or transports migrant workers (excluding members of his immediate family) for agricultural employment."

The amended Act specifies that the term "farm labor contractor" shall not include, (among others):

1. any nonprofit charitable organization, public or nonprofit private educational institution, or similar organization.

2. any farmer, processor, canner, ginner, packing shed operator, or nurseryman who personally engages in any such activity for the purpose of supplying migrant workers solely for his own operation;

3. any full-time or regular employee of any entity referred to in (1) or (2) above who engages in such activity solely for his employer on no more than an incidental basis;

4. any person who engages in any such activity (A) solely within a twenty-five mile intrastate radius of his permanent place of residence and (B) for not more than thirteen weeks per year;

MIGRANT WORKER

First, perhaps, we ought to attempt to define the term "migrant worker." The Farm Labor Contractor Registration Act defines "migrant worker" as follows:

> The term "migrant worker" means an individual whose primary employment is in agriculture, as defined in section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)), or who performs agricultural labor, as defined in section 3121(g) of the Internal Revenue Code of 1954 (26 U.S.C. 3121(g)), on a seasonal or other temporary basis.

The Field Operations Handbook of the Wage and Hour Division of the U.S. Department of Labor interprets the FLCRA definition as follows:

> "The term 'migrant worker' as defined by Sec 3(g) of the Act includes <u>any individual whose primary employment is in agriculture</u>, as defined in Sec 3(f) of the FLSA or <u>who performs agricultural labor</u>, as defined

> in Sec 3121(g) of the Internal Revenue Code, on a seasonal or other temporary basis. In other words, any employee who is performing agricultural work is a migrant worker for purposes of the FLCRA. There is no distinction between the worker who moves about the country within the stream of production and the worker who remains at his home and works in his own area year round."

The U.S. Department of Agriculture defines a "migrant worker" as follows:

> "Migrant workers include all persons who left their homes temporarily overnight to do farmwork in a different county within the same state or in a different State with the expection of eventually returning home."

Apparently, the definition of "migrant worker" depends on the person or organization defining the term. On the one hand, the FLCRA definition includes persons such as students who, living in the country, work in agriculture during summer vacation from school. The same definition classifies as a migrant worker, the wives of U.S. Air Force personnel at Plattsburgh Air Force Base who harvest apples while their children are in school on week days. If the FLCRA definition holds, then there were, according to the U.S. Department of Agriculture 2, 730,000 "migrant" farm workers in 1977. Based on the same USDA study, however, there were only 191, 000 true migrant agricultural workers in the hired work force in 1977.

Generally,speaking, agricultural employers have thought of migrant workers as being workers who leave home, travel to seek employment, remain away from home one or more nights, but return at season's end to their own homes. There are exceptions - - workers who have no homes but these have been considered migrants.

The Department of Agriculture, in its publication entitled "The Hired Working Force of 1977" (Agricultural Economic Report No: 437) shows, in Table 1, that of a 1977 hired farm work force of 2, 730,000. The majority (72%) were whites, 11% were Hispanics and 17% were Blacks and others.

1,056,000 or 39%, worked in agriculture less than 25 days
667,000 or 24%, worked in agriculture from 25 to 74 days
332,000 or 12%, worked in agriculture from 75 to 149 days
295,000 or 11%, worked in agriculture from 150 to 249 days
391,000 or 14%, worked in agriculture 250 or more days

Thus, 63% of the 1977 hired farm work force worked in agriculture less than 75 days during 1977, and 75% worked less than half a year.

These figures are shown here to give a perspective to the over-all agricultural labor picture. It is probably safe to say that the 2,055,000 (75%) who worked less than 150 days were engaged in seasonal work while the 686,000 who worked 150 or more days had ye r-round jobs but did not choose to keep those jobs.

Of the total 1977 farm work force, the USDA study shows that only 191,000 were migrants. In a 1973 study by the U.S. Department of Agriculture entitled "Social and Economic Characteristics of Spanish Origin Hired Farmworkers in 1973" (Agricultural Economic Report No. 349) the racial breakdown of migrant farm workers was 63% Anglo, 33% Spanish-Origin and 4% Blacks and others.

In the section 3(g) definition of "migrant worker" in FLCRA, there is a comma toward the end of the definition and just before "on a seasonal or other temporary basis." Relying on English classes of by-gone years, that comma would mean that the words following it modify the entire sentence. The U.S. Department of Labor has chosen, however, to have those words following the comma

define only "or who performs agricultural labor, as defined in section 3121(g) of the Internal Revenue Code of 1954 (26 U.S.C. 3121(g))". Thus, anyone "whose primary employment is in agriculture, as defined in section 3(f) of the Fair Labor Standards Act of 1937 (29 U.S.C. 203(f))" is considered a migrant worker by the USDL. Thus, by the interpretation of the Act by the USDL, every farmer and rancher in this country is a "migrant worker."

The above interpretation of section 3(g) of FLCRA has resulted in many agricultural employers suddenly realizing that even though they employ workers for year-'round jobs, those workers are"migrant workers"and their employers may be subject to FLCRA.

Senate Report No. 93-1295 contains the following language on page 2: "Basically, there are two types of farm laborers: the migrants who travel from state-to-state along fairly established patterns and those who live permanently in the agricultural area where they work." (Underlining added.) It appears to NCAE that the original Act and the 1974 amendments were written to protect seasonal farm workers, not year-round agricultural workers employed at the same job or by the same employer all year.

Agricultural employers feel very strongly that the U.S. Department of Labor should interpret section 3(g) of FLCRA as it is written. Apparently, Congress, the Department of Labor and even farm worker organizations accept the term "migrant worker" to mean those who leave home and those who work on a seasonal or other temporary basis in agriculture if one reads the statements spoken and written on behalf of "unprotected, uneducated, migratory farm workers."

There in one exception to the above definition of "migrant worker" - - the day-haul worker. In some parts of the country crew leaders pick up, on a daily basis, workers from an assembly point, transport them to agricultural jobs, and then return them at the end of the day. The National Council of Agricultural Employers agrees with coverage, , under FLCRA, of the crew leader engaged in a day-haul operation, who recruits and hires on a day-to-day basis, workers who are paid at each day's end and who return to their regular place of abode each night. The opportunities for abuse of such workers by such crew leaders are potentially present and protection is justified.

PERSONALLY

There has been much debate and several law suits over the meaning of the word "personally" in section 3(b)(2) of FLCRA.

Roderick K. Shaw, Jr., an attorney with the Tampa, Florida law firm of Allen, Dell, Frank & Trinkle explained in detail, in his written statement for hearings before the Subcommittee on Economic Opportunity of the House Committee on Education and Labor on February 22, 1978 how the word "personally" remained in the bill enacted by Congress in December 1974. (See footnote 1, page 111 of the hearing record.) It is clear, from the legislative history described in that footnote that:

1. The word "personally" in Section 3(b)(2) was used in the October 1, 1974 Senate Committee version to distinguish the direct hiring of workers as employees of the farmer or processor from indirect hiring through crew leaders.

2. The decision of a farmer or processor as to whether to incorporate has no rational relationship to the potential abuses the Act is designed to correct.

3. A farmer or processor does not, by incorporating, thereby become the kind of middleman contractor Congress intended to regulate.

An article entitled "Surprise! You May Be A Farm Labor Contractor" written by James Leather, a staff attorney for the Vegetable Growers Association, Glendale, Arizona appeared in The Agricultural Law Journal, Volume 1, Number 2. In that article, Mr. Leathers wrote as follows:

> "The growers' position is that the legislative history of the Act makes it clear that it was the intent of Congress to regulate the middleman, i.e., the independent farm labor contractor, and to protect both growers and farm workers from this middleman. Section 3(b) of the Act defines a farm labor contractor as any person who for a fee engages in any of the following activities: recruiting, soliciting, hiring, furnishing or transporting. The intent of Congress was to regulate and control the farm labor contractor, i.e., the crew leader or middleman who recruits, hires, or transports individuals on behalf of another who either cannot afford to provide these services or does not have the equipment himself. Also, interpretive regulations of the Secretary of Labor concerning the Act state that it was intended to regulate the practices of all persons functioning in the capacity of middlemen between the farmer, grower, etc., and the migrant worker.
>
> "The growers also contend that the legislative history of the wording of §3(b)(2) shows that the word "personally" within §3(b)(2) does not mean that a corporate grower cannot claim the exemption. Prior to 1974, §3(b)(2) provided an exemption for any farmer who engages in farm labor contracting for the purpose of supplying migrant workers for his own operation. While the 1974 amendments to the Act added the term "personally," there

is nothing in the legislative history of those amendments which explains or interprets that word. The word may, however, have been inadvertently left in the Act if the legislative history of the original Senate bill is indicative of congressional purpose. Senate Committee Report No. 93-1206, dated October 1, 1974, sets forth the Senate's version of the proposed amendment to this portion of the Act. The proposed amendment divided the §3(b)(2) exemption into two subparts, subpart A covering the situation in which a farmer or processor hired the workers personally, and subpart B covering the situation in which a farmer or grower hired indirectly through a farm labor contractor. The proposed amendment provided as follows:

> "The term farm labor contractor shall not include a farmer....(A) who personally engages in any such activity for the purpose of supplying migrant workers solely for his own operation; or (B) who indirectly engages in any such activity through an agent or by contract, where he first determines that the person so engaged possesses a certificate from the Secretary that is in full force and effect at the time he contracts with such person so engaged."

"The purpose of subpart B was to make the exemption dependent on whether the grower had complied with the requirements of §4(c) of the Act which forbids the use of a contractor's services unless the contractor has complied with the registration requirements of the Act. Senate Committee Report No. 93-1206, provides in part:

> "The farmer is also exempt from coverage if he recruits workers indirectly through a contractor provided that he meets the requirement of determining in advance that the contractor has complied with the registration requirements of the Act."

"The House of Representatives apparently considered subpart B to be inappropriate, or unnecessary, in light of §4(c), and adopted an amendment designed to strike out the latter half of the Senate version. As the Act now reads, only subpart A survived with the word "personally" still intact. This may have been inadvertent since in the Senate version the word "personally" was used to distinguish the hiring of workers through middlemen from the hiring of workers by the grower. Once subpart B was dropped the word does not have much significance. This conculsion is further suggested by the fact that nowhere in the legislative history is the meaning or intent of the word "personally" explained. It must also be noted that the Act defines the word "person" to include a corporation, thus a corporation must be able to act personally. The reason therefore for the word "personally" in §3(b)(2) was either inadvertence on the part of Congress or perhaps was meant to emphasize the fact that the grower must engage in these activities solely for his own operation and not for the operation of someone else."

As presently written, with "personally" appearing in section 3(b)(2), probably the largest point of contention arises over whether a corporation can act "personally." FLCRA defines the term "person" to include, among others, a corporation (Section 3(a)). Under the law, as this writer understands it, an employer, be it an individual, partnership, association, joint stock company, trust or corporation, is accountable for the actions of its employees. It seems totally inconsistent to call a corporation a person and then say a corporation can not act personally, and solely for its own operation.

Another point of contention is the U.S. Department of Labor enforcement procedure whereby its compliance officers maintain that an employer otherwise exempt under 3(b)(2) must <u>personally</u> transport workers during their employment or have the person who does transport workers, unless exempt under section

3(b)(3) or 3(b)(4) register as a farm labor contractor. This has brought about when coupled with the USDL's interpretation of 3(b)(3), the registration of persons who are no more farm labor contractors than are the members of this Subcommittee.

The interpretation of the word "transports" contained in FLCRA by the U.S. Department of Labor differs drastically from what NCAE believes was the intent of Congress. All references to transporting migrant workers contained in committee reports and elsewhere give the clear impression that the act of transporting such workers means the transportation of workers from one job site to another - - from their homes to a farm or from farm to farm in a vehicle or vehicles owned or controlled by a farm labor contractor. It does not seem possible that it was the intent of Congress to cause the operator of a farm-owned vehicle, operated by farm employees, to register those farm vehicles and their operators and insure those vehicles with coverage equal to that of interstate common carriers for transporting workers from field to field totally within the farm boundaries. If such had been the intent, there would have been some discussion, at least, about those farmers with workmen's compensation under state law or on a voluntary basis.

USDL compliance officers have cited countless persons and their employers for violation of the transportation provision of FLCRA. Two examples will suffice here.

1. The General Manager of a citrus cooperative in Texas was cited for violating FLCRA's transportation provisions because one day he took one of thirty-nine registered crew leaders working for that cooperative in the Manager's private vehicle, half a mile down the road to show the crew leader where he should work his crew the next day. He was cited for not having registered as a "farm labor contractor," for

unauthorized transporting and for not having the FLCRA-required insurance on his personal car.

2. In the sugar cane growing area of Florida, the land is very flat. It is necessary to have rather large and deep drainage ditches, and it is necessary to keep those ditches clear. Many growers use a small dragline shovel. In one situation the operator of the shovel rides back and forth daily in a pick-up truck or car driven by a second person. The second person generally remains at the location where the shovel is operating to serve as oiler, wiper, refueler and safety man. That second man was cited by the USDL for failure to register as a farm labor contractor under FLCRA because he was "transporting" the shovel operator - - a "migrant worker" by definition .

NCAE understands that neither of the above situations resulted in money penalties, but considerable time had to be expended by employers to resolve a matter that, under proper interpretation of the Act and compliance procedures would never have occurred.

The complexities of conforming to FLCRA as interpreted by the USDL are almost astronomical. The Act was signed into law on December 7, 1974. The USDL has not yet published its revised 29 CFR Part 41 Interpretive Regulations. During the nearly 5 years since the law was enacted, the only guidance has been through citations and opinion letters, and the latter are written only when one writes to the USDL and asks for guidance regarding a specific situation.

On January 4, 1978, Charles Kelso, counsel for the Florida Fruit and Vegetable Association, wrote to the USDL posing questions regarding FLCRA compliance. To date, (nearly two years later) Mr. Kelso has not received a reply to his questions. How can anyone give guidance to clients or members under such conditions. Attached to this statement is a photocopy of Mr. Kelso's letter con-

taining 21 questions, the answers to which have not been forthcoming for Mr. Kelso.

NCAE appreciates that FLCRA is a complicated law. As interpreted by the USDL, is even more complicated. NCAE suggests that the purpose for which the law was enacted in 1963 and amended in 1974 would be much better served if the USDL devoted its limited resources to obtaining compliance in those areas where violations having an adverse impact on migrant workers occur and ceased its attempts to force every possible potential "farm labor contractor" (as interpreted by USDL) to register.

Agricultural employers have testified at hearings conducted during the 94th and 95th Congress regarding the difficulties involved in the Department's interpretation of "personally." Employers are convinced that the inclusion of "personally" was inadvertent. We strongly urge that the word be deleted so that employers can go about their business and so that the Department of Labor can go about the serious business of enforcing the Act as Congress intended it to enforced.

INCIDENTAL BASIS

Section 3(b)(3) of FLCRA states that the term "farm labor contractor" shall not include -

> "any full-time or regular employee of any entity referred to in (1) or (2) above who engages in such activity solely for his employer on no more than an incidental basis." ("Such activity" means the recuiting, soliciting, hiring, furnishing or transporting of migrant workers for agricultural employment.)

The U.S. Department of Labor has, by its various interpretations and compliance activities, virtually changed the word "incidental" to "accidental." This,

it seems to agricultural employers, is totally inconsistent with the intent of Congress. Three examples will suffice

1. Senate Report No. 93-1295 (93rd Congress, 2nd Session) has this to to say about section 3(b)(3):

   "While employment relationships vary, it is the Committee's intent that foremen and other bona fide employees will not have to register as Farm Labor Contractors if it can be shown, for example, that they are full-time and permanent employees of an employer who utilizes a limited portion of their time for activities as defined in section 3(b) of the Act."

2. During a debate on the floor of the Senate on October 16, 1974, the following dialogue occurred:

   "MR. NELSON. Mr. President, the purpose of this provision is to prevent farm labor contractors from avoiding registration by becoming the employee of each and every grower for whom they recruit and hire migrant workers, while at the same time providing an exemption under the act for the regular employee of a grower whose duties may include recruiting and hiring solely for his employer. The intent is stated on page 7 of the Senate report (S. Rept. No. 93-1206) on H.R. 13342 reads as follows:

   > In addition, there is a new exemption for his full-time or regular employees if their recruitment activity constitutes only an incidental duty of employment and is performed solely for him.

   "So I think that the committee report and this colloquy make it clear.

   "MR. CHILES. To qualify that a little, the fact that he, being a permanent employee, has this activity as one of his responsibilities would not

cause him to have to register, so long as he some basis of showing that he was a permanent employee, had been, and had other duties. Even though this duty might be considered to be an important aspect of his job responsibility by his employer, the employer might say, 'It is your job to do this a portion of the year,' if he were a permanent employee and continued to have other duties, he would not be considered to have to register.

"Mr. NELSON. The Senator is absolutely correct in the manner in which he has stated it."

3. On July 21, 1975, Congressman William D. Ford, then the Chairman of the Subcommittee on Agricultural Labor of the House Committee on Education and Labor wrote the then Secretary of Labor John T. Dunlop in part as follows:

"However, it has recently come to my attention that the Department may be administering this law in a manner which is contrary to Congressional intent. I have been informed that compliance officers from the San Francisco Regional Office have on more than one occasion informed full-time employee (such as foremen) of farmers in and around San Joaquin County that they must register under the provisions of the Act. It is my understanding that, although these employees are engaged in transporting migrant workers from a meeting place in town to their employer's farm, they do so only incidetally in conjunction with many other duties which their job requires. According to my interpretation of the Act, this was not the way Congress intended it to be administered.

"As you know, section 3(b) of the Act, which defines Farm Labor Contractor, specifically excludes 'any farmer...who personally engages in such activities for the purpose of supplying migrant workers

for his own operation."

"Section 3(b)(3) excludes "any full-time or regular employees. . . who engages in such activity solely for his employer on no more than an incidental basis."

"In your interpretation of this section I would like to call your attention to identical language which appears in both the House Report (H.R. Rep. No. 1.93-1493, p. 7) and the Senate Report (S. Rep. No. 93-1295, p. 7-8). This language provides:

> In addition, the exemption in section 3(b)(3) of the Act has been revised to apply to any full-time or regular employees of any entity referred to in section 3(b)(1) or (2) if their covered activity is performed on no more than an incidental basis and is performed solely for such entity. While employment relationships vary, it is the Committee's intent that foremen and similar bona fide employee will not have to register as Farm Labor Contractor if it can be shown, for example that they are full-time and permanent employees of an employer, who utilizes a limited portion of their time for activities as defined in section 3(b) of the Act (emphasis added).

"It would seem to me that the above cited language leaves little doubt that the Congress did not intend the Act to be construed in a manner that would require a foreman (or other employee) who is a regular full-time employee of a farmer, and who, as part of his many duties, drives from the farm into town and picks up and transports workers to his employer's farm (and returns them to town at the end

of the day) to register under the provisions of this Act. However, in light of the reports I have received, I would like to be apprised of your current policy with respect to this exemption.

"I would also like to direct your attention to two further questions which have recently been brought to my attention - the interpretation of the term "for a fee" which appears in section 3(b), and the interpretation of the word "personally" in section 3(b)(2).

"In light of the 3(b)(3) exemption which excludes "any full-time or regular employee", I would assume that the words "for a fee" would not be construed to include any part of the salary of a full-time or regular employee who, as part of his job, is required to transport workers between a meeting place in the city and his employer's farm. I would like to have your policy with respect to this language clarified, since it has been brought to my attention that some confusion may exist in certain areas of the country."

In spite of Congressman Ford's letter to Labor Secretary Dunlop, Warren D. Landis, Deputy Administrator, Wage and Hour Division, USDL signed an August 26, 1977 Opinion Letter (WH - 431) which states, in part:

"A fieldman employed by a shed such as described above who transports farm labor contractors to inspect a grove or field in connection with the day-to-day work assignments must either be registered as a farm labor contractor with transportation authorized or be a holder of a valid farm labor contractor employee ID card working for a registered farm labor contractor who has transportation authorized. The truck or vehicle used to transport the farm labor contractor must be identified on the farm labor contractor registration card. The truck

must be inspected and have adequate seating facilities for each person being transported. Thus if the contractor is the only one transported, appropriate seating would be required for the farm labor contractor and the driver. (See item 17 of form WH-414) Each full-time or regular employee who engages in farm labor contracting activities for a shed which is subject to the registration requirements of the Act must register either as a farm labor contractor or be the holder of a valid farm labor contractor employee indentification card."

Furthermore, the Secretary of Labor has, by interpretation, succeeded in emasculating the 3(b)(3) exemption. He has interpreted "full-time employee" to mean an employee who is hired for continuing year-round employment and who works a full schedule of hours for his employer. He has interpreted "regular employee" to mean an employee whose employment is contemplated on a year-round basis but who will work less than full-time for an employer. This all boils down to the fact that nearly all the growers and processors in this country will not, by definition, qualify for the 3(b)(3) exemption. NCAE finds it very difficult, if not impossible, to believe that Congress did not realize that agricultural production and food processing are seasonal. Oranges do not grow year-round in Florida. Artichoke packing sheds do not operate year-round in California. Food processors in Wisconsin and other states can not operate when there are no agricultural products to process.

Absent interpretation and enforcement of section 3(b)(3) based on the realities of agriculture, that section should also be amended so that it truly sets forth the intent of Congress.

ENFORCEMENT

During hearings leading to the 1974 amendment of FLCRA, the U.S. Department of Labor estimated that there were 6,000 crew leaders active in this country and that the 1963 Act had produced registration of only 2,000. Through May 20, 1979, the FLCRA Public Registry showed a total of 12,834 farm labor contractors and farm labor contractor employees registered under the Act. Quite obviously, USDL has exceeded its fondest expectations. In that total, NCAE is convinced are hundreds of persons forced to register by virtue of the exceedingly broad interpretation of the Act's coverage and exceedingly narrow interpretation of its exemptions.

An analysis of the citations issued against all farm labor contractors is quite revealing. From FY 1977 through the first half of FY 1979, of a total of 5,061 citations, only:

14 were for misrepresentation to workers
138 were for knowingly hiring illegal workers
22 were for improper money payments
9 were for improper charges for workers' purchases
63 were for housing and health standard violations
11 were for failure to abide by agreement with workers
3 were for discrimination against workers exercising their rights

These substantive violation citations where there were alleged abuses of "migrant workers" total 260 or just 5.2% of the total citations issued.

Labor could better concentrate its resources on curbing abuses by unscrupulous crew leaders as Congress intended instead of expending their manpower to force corporate personnel directors, school bus drivers transporting local youths to detassel corn, general managers driving crew leaders to various groves, foremen

or other employees driving one or more workers from field to field on the same farm, owners and foremen of feed lots which employ only year 'round labor, supervisory personnel of food processing plants, and other such persons to register as farm labor contractors.

Apparently, 52 United States Senators agree with this view.

FARM LABOR HOUSING

There are two types of farm labor housing; That furnished voluntarily to migrant farm workers and that furnished in compliance with mandatory housing requirements of certain Federal regulations.

Both types of housing are subject to inspection by state and local health authorities. Both types are subject to inspection by the Occupational Safety and Health Administration with two exceptions. Agricultural employers who utilize the U. S. Employment Service must have housing that meets the Service's standard. Agricultural employers who request certification for the employment of temporary foreign workers must have housing that meets the U. S. Employment Service standard.

STATE AND LOCAL INSPECTION

Thirty one (31) states and the Commonwealth of Puerto Rico have laws governing agricultural labor housing. While there is a variation between states, many have laws which very closely resemble the U. S. Employment Service regulation or the housing requirements of OSHA.

OSHA

Under the Occupational Safety and Health Act, the Occupational Safety and Health Administration, USDL, adopted, as a consensus standard, a voluntary temporary labor housing standard promulgated by the American National Standards Institute. The OSHA standard is contained in 29 CFR Part 1910.142.

OSHA's authority to inspect agricultural labor housing is derived by OSHA from its responsibility for health and safety in the workplace. Many employers have argued that housing is not part of the workplace - - that the workplace is the field, grove, orchard, ranch, packing shed or processing plant, not the place where workers live while off duty. This view has met with stiff resistance from OSHA, but in two recent decisions, a USDL Administrative Law Judge ruled that OSHA has no jurisdiction and held that housing furnished by an employer for the benefit of employees and in which employees perform no labor is not a "workplace." In the cases in question the judge concluded that housing was not a condition of employment because workers were not compelled by economic realities or geographical location to live in the housing. OSHA has, needless to say, appealed the judge's decision to the Review Commission.

There is a a degree of inconsistency when courts, the USDL, farm worker organizations and other groups demand access to workers in employer-supplied housing because such housing is held to be the workers' home and workers should be free to invite in whomever they wish, and the USDL's view that such housing is a part of the workplace and the employer's responsibility.

Previous Congresses have, through Labor-HEW appropriations bills, prohibited OSHA from jurisdiction over any agricultural workplace where an employer employed ten or fewer workers at any one time during the year. The 96th Congress limited the prohibition to any workplace which employs ten or fewer workers at any time during the year and which does not have a labor camp. It is important to note, however, that OSHA can inspect agricultural housing only when it is occupied.

U. S. EMPLOYMENT SERVICE

The U. S. Employment Service (USES) has promulgated its housing standard, 20 CFR Part 620. Agricultural labor housing of employers utilizing the USES must pass inspection prior to occupancy by workers.

DISCUSSION

One can readily surmise the first complaint of agricultural employers. Just before and during the busiest period of the year, an agricultural employer is beset with housing compliance officers. It is not unusual to have a different inspector four days running (USES,county, state, then OSHA for instance).

Another problem has been that the USES and the OSHA standards vary to a small degree. Housing might pass USES inspection, then OSHA would show up and raise cain. About two years ago the USES published a rule which gave agricultural employers notice that the USES standard had been cancelled and that within 12 months all housing would have to meet the OSHA standard. There was a great outcry of objection. In many instances remodeling good USES-standard housing of concrete block construction to meet the OSHA standard would have cost more than the cost of the original construction. A compromise was reached. Any new housing built or any major remodeling of USES-standard housing after January 1, 1979 would have to meet the OSHA standard. NCAE concurred with that compromise.

The subject of agricultural labor housing is an explosive one. NCAE will not deny that there is still some undesireable housing in this country. In its newsletters, NCAE has urged its members to build good housing to meet or

exceed the OSHA standard. NCAE does not have statistics to prove it, but it is safe to say that agricultural labor housing has come a long way in the past ten to fifteen years. Employers are building concrete block housing and they are using modern house trailers to house those on whom they depend for the harvest of their crops and other work.

There are those who would mandate that housing exceed the OSHA standard. There are severe economic considerations involved, however. How much money can an employer afford to spend per year for housing which will be occupied for just a few weeks?

There are those who would demand that each employer provide family housing. Many do, but in the larger sense, it is almost an impossibility, for there is absolutely no way that an employer can build and maintain housing for families when he has no idea how many families may arrive and how large those families may be.

ENFORCEMENT

The Department of Labor must adopt a realistic approach to enforcement of housing standards. NCAE suggests the following:

1. Continue and expand the present program whereby an OSHA inspector will ascertain, before conducting an inspection, whether the housing was built to meet the USES or the OSHA standard and then inspect it accordingly.

2. Work out an arrangement with state and local authorities whereby one inspector will perform an inspection for all levels of government. This would conserve manpower and save employers valuable time when they are in their busiest season.

3. Give an employer a chance. The state inspector in one large state inspected labor housing at a large orchard just before the workers arrived and gave it a clean bill of health. The morning after the workers arrived an OSHA inspector arrived and found screening loose in a door. Apparently a worker had indavertently pushed on the screening instead of the frame when opening the door. This particular orchard had assigned one man full time to make daily rounds of the housing, to fix what he could and report other damage to the manager. The damaged screen had been reported to the carpenter but he had not had time to fix it before the OSHA inspector arrived. A citation was issued. Why not use a little reason? Why not check back later and see if the door had been fixed as promised?

4. Keep in mind that even guests in high-priced hotels do damage to their rooms. Instance after instance has been reported to NCAE of rather wholesale damage to labor housing which could not be repaired instantly.

5. Make prior-to-occupancy inspections at realistic times before workers arrive. Requiring an employer to set up his housing 100% several months before it is to be occupied so it can be inspected is totally unrealistic. The employer, to avoid vandalism and loss will, after the inspector has left, have to go through the exercise of removing

light bulbs, matresses, beds and bedding. Then he will have to put everything back just before workers arrive.

By working together, government at all levels, and particularly the Department of Labor and employers can continue the upward curve of present improvements in labor housing.

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January 4, 1978

Mr. Xavier M. Vela, Administrator
United States Department of Labor
Employment Standards Administration
Wage and Hour Division
14th & Constitution Avenue, N. W.
Washington, D. C. 20210

Re: Farm Labor Contractor Registration Act

Dear Mr. Vela:

We, as representatives of virtually all the Florida Sugar Cane Industry and of much of the Florida Fruit & Vegetable Industry, appreciate the meeting we had in Washington on December 21, 1977, with Messrs. Landis, Cohen, Sugarman and Van Zanen of the Wage-Hour Division, and Messrs. Myerson, Padilla and Ms. Duryee of the Solicitor's Office. We had a frank discussion of the problems faced by our farmer clients in interpreting and complying with the Farm Labor Contractor Registration Act ("FLCRA"). We were somewhat disturbed when these top officials charged with enforcement of the Act could not give us clear-cut answers to the following questions which their field investigators are now asserting and which carry three-year jail penalties. We need specific answers to the following questions and will appreciate your written response. These questions arise from actual facts existing at various of our farmer clients' operations.

1. (a) Is the term "migrant worker" used in FLCRA as the persons to be protected limited in any way by where the worker has "migrated" or traveled from? (b) Does FLCRA as amended in 1974 apply to all persons performing the named year-round services for "all agricultural employees" as defined in the Fair Labor Standards Act, 29 U.S.C. § 203(f), even though all persons involved are employees of a farmer, live year-round on the farmer's farm, and work solely for that farmer?

2. (a) Is the term "migrant worker" as used in FLCRA to describe the persons to be protected by the Act limited to seasonal or temporary workers? (b) Does the phrase "on a seasonal or other temporary basis" in 7 U.S.C. § 2042(g) modify and limit the definition of agricultural employees in 29 U.S.C. § 203(f), or do you interpret said phrase to limit only the definition in 26 U.S.C. § 3121(g)?

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Mr. Xavier M. Vela, Administrator
United States Department of Labor
Employment Standards Administration
Wage and Hour Division
January 4, 1978

3. As a result of your answers to questions 1 and 2 above, do you conclude that FLCRA requires registration for all farmers' employees who regularly perform the specified activities with respect to all American farm workers?

4. (a) Does the exemption in 7 U.S.C. § 2042(b)(5), apply to persons who engage in covered activities solely with respect to West Indian sugar cane cutters who come into this country under the "H-2 Program" and are employed pursuant to Department of Labor certification and regulations at 20 C.F.R. § 602.10, et seq., and pursuant to a contract with the British West Indies Central Labour Organisation, a government organization of the several Island governments participating in this program? (b) If the exemption in § 2042(b)(5)(B) does not apply to persons performing covered activities with respect to such H-2 workers, what does that exemption apply to?

5. A bus driver employed by a farmer devotes two hours each day driving a busload of BWI cane cutters, referred to in question 4 above, who are employed by the same farmer, to and from the field. During the remainder of his work day this bus driver is employed by the farmer to drive a tractor engaged in the harvest operations on the farmer's farm or perform some other activity not connected to farm labor contractor activities. The bus driver does not transport any workers except H-2 workers. Must the bus driver register as a farm labor contractor?

6. (a) A farmer has five tractor drivers who are employed by him full-time year-round. The farmer owns a truck which is used by these tractor drivers to travel to and from home each day. One of the drivers drives the truck every day devoting about one hour to such driving duties while transporting the other four tractor drivers. Must this driver register as a farm labor contractor? (b) If the five tractor drivers alternate the driving duties, must all five register as farm labor contractors? (c) Must the truck be registered and insured under FLCRA?

7. (a) A crew of workers is sent to the fields to pick up a load of tomato stakes to take them to another field ten miles away. All three workers ride in the truck on a public highway transporting the stakes between the fields. All three

then return to the yard to get their next assignment which is to pick up a load of crated vegetables at a field and take it to a packing shed. Again, all three workers ride on the truck, load and unload it. Such duties are a regular and continual part of their employment by the farmer; they perform such duties solely in connection with their employer's farming operations. Must the driver of the truck register himself and the truck as a farm labor contractor? (b) If all three employees alternate the driving duties so that each one in fact drivers, transporting the other two, on a regular and recurring basis as a part of his employment by the farmer, must all three register as farm labor contractors?

8. Two mess hall workers employed by a farmer during the five-month harvest period each year prepare the pickers' noon meal and load it cnto a truck. Both workers get on the truck and drive five miles on the public road to the field where a crew of harvesters is working. After delivering the food to the workers they return to the labor camp to complete their work day as cooks, utility workers, janitors, etc., employed by the farmer in the labor camp. The above driving duties involve about one hour's work each day. Must the persons doing this driving register and must the truck be registered?

9. A driver of a tractor who is an employee of a farmer pulls a harvesting machine on which other workers who are employed by that farmer ride while harvesting the farmer's crops. This driving and riding occurs totally within the farmer's field. Must the driver of this tractor register as a farm labor contractor?

10. A field foreman employed by a farmer is furnished a pickup truck owned by the farmer which the foreman keeps in the field. Several members of the harvest crew are considered reliable workers and have appropriate drivers' licenses. The foreman occasionally assigns them driving duties to transport injured or sick workers to the hospital or to their homes, or to return to the barn with another worker assistant to pick up tools or supplies, or to perform other similar ad hoc driving assignments. These assignments are not performed on any regular

basis, but those workers have been employed for many years and in the past have performed such driving duties approximately 20 times during each 20-week harvest season (although not exactly once a week) and may be reasonably expected to perform such ad hoc driving assignments during coming harvest seasons. Must these workers register as farm labor contractors? Must the foreman's truck which is used on such a basis to transport employees of the farmer other than the foreman himself be registered and insured under the Act?

11. An agricultural field foreman employed by a farmer and solely on his farm is furnished a truck in which he transports only himself to and from work. He does not transport any other employee of the farmer. He also drives on other assignments to check the fields, pick up supplies, etc. Must this foreman register because he is an agricultural employee and transports himself?

12. A field foreman employed full-time year-round by the farmer hires workers who come individually to the field seeking employment as pickers. These hiring activities involve about 15 minutes each morning. The foreman is paid a salary by the farmer; his primary duties are supervising and coordinating the work. All the workers hired become the employees of the farmer. Neither the foreman nor any other employee of the farmer does any recruiting, soliciting, or transporting of agricultural workers. Must this foreman register as a farm labor contractor?

13. A farmer is in his field and sees that there are too few harvest workers. He tells his foreman, who is his full-time year-round employee, "Tell the workers to put out the word that we are hiring more pickers." The foreman, pursuant to this instruction, tells the workers, "We need more pickers. Tell your friends we are hiring pickers to join this crew." The pickers pursuant to this instruction do advise their relatives, friends, neighbors of the employment opportunity. As a result of such advice, some of these persons do come to the farmer's employment office the next day and hire on as picker-employees of the farmer. This is a regular and recurring process throughout the year. (a) Must the farmer register? (b) Must the foreman register? (c) Must the pickers who solicited and recruited register?

Mr. Xavier M. Vela, Administrator
United States Department of Labor
Employment Standards Administration
Wage and Hour Division
January 4, 1978

14. (a) A farmer maintains a personnel office to recruit and hire agricultural workers solely for his farming operation. The manager of the personnel department does not personally talk to the agricultural employees during the recruiting and hiring process but he does personally organize, plan, and direct his subordinates who go out to the surrounding counties to recruit employees for the farmer's farming operation. The manager does write and sign Employment Service job orders and does place newspaper and radio help wanted ads. Must this manager register as a farm labor contractor? Is indirect involvement with recruiting and transporting treated the same as direct involvement with covered activities?

(b) Jones is a full-time year-round employee of the farmer in the personnel department whose primary duty is to work at the hiring window at which agricultural employees are hired solely for the farmer's operations. Jones explains the various jobs available, accepts applications, reviews them and hires workers, subject to the field foreman's final approval when they arrive at his field. For many years all of the workers hired by this farmer have resided within the county. The hiring process goes on year-round. Must Jones register as a farm labor contractor?

(c) A bus pulls up in the personnel office parking lot and forty workers get off the bus. Each worker individually applies for employment at Jones' hiring window. Jones gives them individual applications, hires some and rejects others, and the bus drives away with those who were rejected. Jones is told at the end of the day that the same bus came back to the field and picked up those workers who were hired by him and took them away. The farmer's personnel department had run "help wanted" ads in the newspaper and radio but had not asked any person to bring crews to it, had not offered to pay nor paid any person any fee for bringing the workers to its hiring window, and did not arrange for or pay for any transportation for these workers. Does Jones or any other employee of this farmer have a duty to inquire who owns the bus, where the workers came from, whether they have agreed to pay anyone else a fee, whether the bus is insured, whether anyone connected with the bus or group of workers has

registered as a farm labor contractor? If so, what is the basis and extent of this obligation?

15. Assume the same facts as in question 17(c) above except that Jones recognizes the bus to be that of Smith, a well-known crew leader in the county who runs a day haul operation and charges his crew a head tax and transportation fee. Nevertheless, no employee of this farm has asked Smith to bring workers to this farm. The workers that Smith brought in were individually hired or rejected on the same basis as all other walk-in employment applicants. Those hired became employees of the farmer, who paid directly to them the same wages as were paid to other individual workers. No one, manager or personnel agent, employed by the farmer had any dealings whatsoever with Smith or paid anything to him. Does Jones or any other employee of the farmer have an obligation to inquire into Smith's dealings with the people that he brought in on the bus or whether Smith is currently registered as a farm labor contractor? If so, what is the basis and extent of such obligation?

16. Assume the same facts as in question 15 above, but in this case Smith applied to Jones for a job as a tractor driver and was hired as a tractor driver at the same wages paid to all other tractor drivers and without any conditions on Smith's employment as to whether or not he brought in or provided any transportation to any other workers. Does Jones or any other employee of the farmer have a duty to demand to see Smith's farm labor contractor registration papers, bus insurance, etc.?

17. (a) A farmer sends a truck to the county seat each day during the four-month harvest season to pick up a few workers from "the ramp," a well-known gathering place sponsored by the State Employment Service where workers come to sell individually their services for the day to various farmers' representatives who appear. At the end of the work day the farmer's truck takes the workers back to the ramp where they get in their cars to go home. Must the driver of this truck be registered as a farm labor contractor? Must the truck used for this purpose be registered and insured pursuant to the Farm Labor Contractor Registration Act?

Mr. Xavier M. Vela, Administrator
United States Department of Labor
Employment Standards Administration
Wage and Hour Division
January 5, 1978

(b) Florida Workmen's Compensation law now applies to agricultural workers, giving them the same protection as is available to industrial workers in the state. These workers are covered by workmen's compensation insurance from the time they get in the truck at the ramp until the time they get out of the truck that evening at the ramp, even though their compensable working time would be less. Florida Workmen's Compensation law also states that it will be the exclusive source of relief for injuries during the course of employment. Fla. Stat. § 440.11(1). Assume this state law would preclude any tort claim against the farmer or his liability insurance carrier by any agricultural or other employees on the bus. Where all the passengers on the bus are employees subject to workmen's compensation coverage and no one can collect on the insurance that might be required on that bus by FLCRA, is it necessary to maintain such insurance? If so, why?

18. Four agricultural workers arrange to come to work each day in one of the worker's car with each of the three passengers paying $2.00 per day for the ride, clearly in excess of a pro rata share of the cost of operating the car. The car owners had nothing to do with soliciting, recruiting or hiring his three passengers as employees of the farmer; the farmer and his agents had nothing to do with this transportation arrangement. All four are employed as agricultural tractor drivers at the same wage rate by the farmer. (a) Must the car owner-driver register as a farm labor contractor? (b) Must the farmer require the car owner-driver to show farm labor contractor registration and insurance papers if the farmer receives information about this payment arrangement? (c) Does the farmer have a duty to inquire whether there is such a payment arrangement when he sees four workers regularly arrive and leave in one of the worker's automobile?

19. The employer recruits agricultural workers through interstate United States Employment Service job orders. Pursuant to agreement with the Department of Labor, the employer will advance a prepaid bus ticket to workers who will come to Florida to cut sugar cane. Four workers arrive at the Nashville, Tennessee Employment Service office and say they will cut sugar cane. The Employment Service representative, pursuant to the job order, calls the farmer's personnel office to obtain the prepaid bus tickets but also mentions that one of the

workers has a car and all four of the workers desire to come to Florida in that car. The Employment Service officer asks whether the farmer will agree to pay the car owner the equivalent of four bus tickets to cover his car expense, payable when the workers arrive at the farm in Florida. (a) If the farmer's personnel representative agrees to this proposal, does the farmer-employer thereby assume any obligation under FLCRA? (b) Does the farmer's personnel representative assume any additional obligation as a result of this transaction? (c) Does the car owner-driver have an obligation under FLCRA as a result of this single isolated transaction? (d) Does the farmer or his personal representative escape an obligation under FLCRA to have the driver and the vehicle registered and properly insured if the personnel representative responds to the Employment Service inquiry, "Tell the workers we will prepay bus transportation but we will not pay for any other kind of transportation," but he knows they are driving the car to Florida to accept the jobs in reliance on the ES job order?

20. Section 3(b)(3) of the Act, 7 U.S.C. § 2042(b)(3), exempts any full-time or regular employee of a farmer who performs covered activities for that farmer "on no more than an incidental basis." (a) What does "incidental" mean? (b) If an employee of a farmer performs such covered activities once every day for ten minutes, is that "incidental?" (c) If he performs covered activities as part of his employment every week for 20 minutes, is that incidental? (d) If he performs covered activities five times at random times spaced throughout a five-month harvest season for one hour each time and it is clear that his duties will require him to perform such covered activities to this extent, is this incidental?

We hope you can give us specific guidelines in response to this question. It is no help to respond "it depends on the facts and circumstances of each case." It is no help to state that "if the farm labor contracting activities are one of the major or principal functions of the individual's job" they are not incidental. It is of little help to tell a farmer that "those full-time or regular employees who utilize only a limited portion of their time for farm labor contracting activities" need not register. Farmers must have some specific guidelines before they can be held to a statutory duty backed by threat

of three years in prison for failure to register. We hope you will not duck this question.

21. We understand that the Wage-Hour Division in enforcing FLCRA asserts that if farm labor contractor duties are a "regular and recurring" duty of any employee of any farmer, even though they may take only five minutes time each day or week, such duties are "more than incidental." (a) Is this a correct statement of the Wage-Hour Division's enforcement policy? (b) If so, how do you reconcile that interpretation with the intent of Congress published in the Senate Report No. 93-1295, Calendar No. 1228 at page 7 (quoted in part on page 2 of your October 3, 1977 Opinion Letter) stating "that foremen and similar bona fide employees will not have to register as farm labor contractors" if it can be shown, for example, that they are full-time and permanent employees of an employer "who utilize a limited portion of their time for activities as defined in § 3(b) of the Act?" (c) Is the test of "incidental" whether the activity is "regular or recurring" or is the test what percentage of the person's work time is devoted to such activities? If the test is a percentage of time, what percentage? Cannot stated percentages be used as are used in Wage-Hour exemptions?

Mrs. COLLINS. Our next witness is going to be Mr. John Ebbott, the director of litigation for the Migrant Legal Action Program, Inc., Washington, D.C.

Mr. Ebbott, would you tell us who is accompanying you, please?

STATEMENT OF JOHN EBBOTT, DIRECTOR OF LITIGATION, MIGRANT LEGAL ACTION PROGRAM, INC., WASHINGTON, D.C.; ACCOMPANIED BY GEORGE E. CARR, CHIEF ATTORNEY, LEGAL AID BUREAU, INC., SALISBURY, MD.; AND ART READ, CAMDEN REGIONAL LEGAL SERVICES, INC., CAMDEN, N.J.

Mr. EBBOTT. Yes, Madam Chairwoman.

I am accompanied by attorney George Carr from the Legal Aid Bureau in Maryland and attorney Arthur Read from the Camden Regional Legal Services in New Jersey.

Mrs. COLLINS. Thank you.

May we ask the same thing of you, please? We would like you to submit your testimony in its entirety in the record, and would like you to please summarize it because we do have other witnesses, and our time is shorter than we would like to have it.

Mr. EBBOTT. I would be happy to do that, Madam Chairwoman.

Mrs. COLLINS. Without objection, it will be included in the record.

Mr. EBBOTT. We appreciate the opportunity extended us to testify before you this morning. Mr. Carr represents migrant farmworkers in the States of Maryland and Delaware; and Mr. Read represents migrant farmworkers in the State of New Jersey. I work with the Migrants Legal Action Program which is a national support center for attorneys and paralegals, such as Mr. Carr and Mr. Read around the country.

In the course of our work, we have accumulated a certain body of experience which we would like to share this morning.

To begin, I think the analysis offered by Congressman Maguire and Mr. Shaw is correct, although I do not know where Mr. Shaw got his percentages. I think the analysis is correct. We ought to look, when we discuss these proposals, at what is actually going on in the field: What are the abuses?

The abuses that the Farm Labor Contractor Registration Act was initially intended to cover continue, to a great extent, today. There has been minor improvement, but the abuses are still going on. What happens to migrant farmworkers is generally that they are misled when they are recruited as to what the wages and working conditions will be. They are not given disclosure. They are often transported to the worksite or at the worksite in uninsured and unsafe vehicles.

When they get to the worksite, they find that the housing is terrible: Filthy and disgusting conditions. They find that they are not being paid as much as they thought they were going to be paid. They find that not nearly as much work is available as was told them when they were recruited—maybe they were recruited about 1,000 miles away from the worksite.

They find that when they do get work, their first paycheck may be about $5 because of the huge deductions that have been taken out, deductions for which they have been given no record.

Probably one of the major points that we have to make today is to dispute the one percent/99 percent figure offered by Mr. Shaw. We

think that the abuse by corporate agribusiness is much more widespread than 1 percent.

Mrs. COLLINS. What percent do you think it is?

Mr. EBBOTT. A conservative estimate of mine—and it is an estimate—would be around 50 percent. What we have done is to document a number of these instances. We do not just have one or two; we have a number of instances; and I request that you direct your attention to exhibit A where we have compiled some of thees.

In addition, I have more exhibits that I would like to offer involving agribusiness corporations in Florida and Illinois, among others.

Also, an additional factor that has not been raised is that the traditional middleman or transient crew leader is often hired by corporate agribusiness to do its recruiting, and some of the worst of these traditional crew leaders have been used by agribusiness to do their recruiting for them.

There have been instances of peonage, in fact, that still continue today.

Mr. MAGUIRE. Excuse me. Could I just interrupt to ask, if that were the description of the relationship between the contractor and the hiring entity, would they be excluded from the law if the word "personally" were to be taken out?

Mr. EBBOTT. Yes; they would be excluded from the law if the word "personally" were to be taken out, and they would especially be excluded from the law if the phrase "on more than an incidental basis" was taken out.

Mr. MAGUIRE. Thank you.

Mr. BUTLER. Pursuing that, what would you recommend under those circumstances, in terms of legal redress to the abused employee?

Mr. EBBOTT. I would recommend the statute as it is now. It is a very effective——

Mr. BUTLER. No; no. If the change which was the basis of the gentleman's inquiry were out of the law—and you have cited several instances of abuse—and you were the lawyer for the employee—that is what you are—what redress would he have?

Mr. EBBOTT. That is the difficulty. He would have very little.

Mr. BUTLER. If a man beats you up, you do not have any redress?

Mr. EBBOTT. Not very much, and Mr. Read will get into the effort it takes to get redress.

Mr. BUTLER. Well, do we have criminal laws? I will ask the gentleman if it is against the law to beat anybody up in New Jersey.

Mr. MAGUIRE. I believe that it is, but I am not sure if that——

Mr. BUTLER. I know it is the practice, but I am asking if there is a law.

Mr. MAGUIRE. I am not sure that necessarily resolves all of the issues before us.

Mr. EBBOTT. The law is there, Congressman, but whether it is an effective remedy is quite another matter.

Mr. BUTLER. You are a lawyer, and maybe you are not meeting your responsibilities if you do not go after them.

Mr. EBBOTT. I am familiar with the way the legal system operates also, especially in a rural county. When I practiced on behalf of farmworkers in Wisconsin, two State migrant inspectors were beaten up by a couple of growers; criminal charges were brought, and they

were acquitted. So, oftentimes there is a difference between the existence of a State criminal law on the books and effective conviction in the courts.

An additional aspect we would like to point out is that corporate abuse affects many more farmworkers than does abuse by the so-called "traditional" crewleader. A "traditional" crewleader may bring 10, 20, or 30 people up; some people have larger crews than that. But corporations, being generally huge entities—multimillion-dollar enterprises—hire many, many more workers than individuals. So, an abuse which they perpetrate is going to affect many more persons that the statute was designed to protect.

Agribusiness has also claimed that they are being overregulated because of the statute—they are being overregulated by the Department of Labor. That is absolutely not true. The Department of Labor has been given this past fiscal year 58 work-years of enforcement time, which is quite a small amount to police the whole nation for FLCRA abuses. I do not think agribusiness can legitimately claim to be overregulated given that.

In addition to that, the Department of Labor's use of that 58 work-year amount is only 31.9 work-years, so they are not even using the total amount available to them.

Just a word about this tractor incident. It is possible that there are some errors of judgment by compliance officers; we will not dispute that; but the point that is overlooked in that example is that if three people are riding on the back of a tractor, one, it is dangerous; it is not a legitimate practice. Any farmer knows—and I have been one— that that is a dangerous practice. Whether that comes under the Farm Labor Contractor Registration Act or not is another matter, and maybe the compliance officer committed an error of judgment. But I do not think that warrants exempting agribusiness from the statute altogether.

Mr. BUTLER. What is your opinion about that particular situation? Do you think it was the intention of the act to direct itself to how many people ride on a tractor?

Mr. EBBOTT. I do not think that was the primary intention of the act. In that situation, if it was within the 25-mile radius and occurred less than 30 weeks of the year, it is exempt from the act, and maybe the compliance officer made a mistake. But I stress that that is one example. Anyone can come up with one horror story; it is a different matter to show a pattern and practice.

The Department of Labor overall—and our written testimony goes into this—has failed to enforce the statute. There have been some recent areas of improvement and some recent attempts by the Department to better enforce the statute, but overall there has been a failure to enforce.

The answer to the current abuses being visited upon farmworkers by agribusiness as well as by individual crewleaders is much more effective enforcement by the Department of Labor, and the legal remedies in the statute that we as lawyers, and farmworkers themselves, can use under the statute. The answer is not to exempt agribusiness and to exempt the "regular" employees of agribusiness from any coverage whatsoever under the statute.

As was mentioned earlier, there is now an attempt being made by agribusiness to do just that in the Senate. Until this morning's Post article and until this hearing, that attempt was being kept pretty quiet. The idea, as we understand it, is to work toward a midnight rider—a nongermane rider—to an agricultural piece of legislation that is going to come out of the Senate Agriculture Committee and go to conference with the House Agriculture Committee, both committees being more sympathetic to agribusiness than they are to farm labor.

Agribusiness and their crewleaders are afraid to let these amendments see the light of day because they have something to hide. What they have to hide is their current and future recruiting abuses and their intention to continue those.

Thank you very much.

Mrs. COLLINS. Mr. Carr?

Mr. CARR. Thank you, Madam Chairwoman.

As Mr. Ebbott mentioned, I practice law in Salisbury, Md., and I represent migrant farmworkers in both Maryland and Delaware.

I would like to join with Mr. Ebbott in thanking the subcommittee for affording us this opportunity to appear before it. This is the first time I have ever testified before a congressional committee. Unlike Mr. Shaw, our clients do not seem to enjoy the same access to the legislative processes as his clients.

Madam Chairwoman, I believe the record of the Department of Labor's enforcement activities under the Farm Labor Contractor Registration Act could lead only the most cynical person to conclude the FLCRA is a law that has gone wild. As Mr. Ebbott mentioned, the Department has only used 31.9 man-years of its FLCRA time instead of the promised 58. The results obtained from these 31.9 man-years of effort have been much less than impressive.

Nationwide, the Department of Labor, during its past fiscal year, encountered only 25 instances of misrepresentation by farm labor contractors to farmworkers. The Department only encountered 24 instances of farm labor contractors failing to abide by the terms of employment contracts.

I would like to extend an invitation to the members of the committee to come with me to my service area on the Delmarva Peninsula during the height of the next growing season. I am relatively certain we could find more than 25 circumstances of misrepresentation in a very short period of time.

The Baltimore area office of the Wage and Hour Administration which is responsible for administering FLCRA in my service area encountered no instances of worker misrepresentation during its past fiscal year.

Members of the committee, in June of this year I reported that crewleader Marcus Portalatin was working in Delaware. Mr. Read will go on to describe to you what happened as a result of Mr. Portalatin's activities on the peninsula this year. It is absolutely incredible that the Department of Labor could have made any good faith investigation into that situation and come up with the conclusion that there was no misrepresentation to the members of that crew.

The Department of Labor reports that it found 158 housing violations in 706 inspections of labor camps during its past fiscal year. In

other words, the Department contends that it found housing violations in less than 23 percent of its housing inspections. The Baltimore area office found 17 violations, it says, in 41 inspections.

Again, I would like to invite you to come to the peninsula. I think we can find more than 17 violations in a very short period of time.

Mrs. COLLINS. We appreciate the invitation. I have a feeling that the subcommittee will be accepting such an invitation. Thank you.

Mr. CARR. I appreciate that.

Madam Chairwoman, with your leave, I would like to show the members of the subcommittee some pictures of the largest labor camp in my service area in order that you might get a sense of what it means when the Department fails to adequately enforce the law.

Mrs. COLLINS. Do you have the pictures here?

Mr. CARR. Yes; I do.

[Pictures shown.]

Mrs. COLLINS. Is this the Westover camp? Has it been cited for housing violations?

Mr. CARR. Yes. The Westover camp houses approximately 750 migrant farmworkers, and it is located about 150 miles from this building. As a matter of fact, the operators of that labor camp facility, the Somerset Growers, Inc., have been cited by the Maryland Occupational Safety and Health Administration, I believe for the first time, and have been requested to pay a fine of $1,200.

Madam Chairwoman, from my own personal knowledge and my own contacts within the farmworker community, I know that this labor camp has been subject to these conditions for much longer than 3 years. The reliable people in my service area advise me that the conditions in this labor facility at this time are now worse than they were 5 years ago.

Mrs. COLLINS. When were these pictures taken?

Mr. CARR. These pictures were taken in August of 1979.

At the request of the Legal Aid Bureau, an expert who is familiar with the problems of institutional living toured the Westover facility. The expert related to me at the conclusion of his tour that this was one of the worst residential facilities he had ever seen. I regarded this as somewhat of a shocking statement because this individual had testified in a large number of prisoners' rights cases regarding jail conditions. But on further reflection, I began to think that this statement was not that shocking after all.

Originally, the Westover labor camp or most of the buildings in the Westover labor camp were used as barracks for the Civilian Conservation Corps. In World War II, those buildings were used to house prisoners of war. Now they house migrant workers.

The lists of crewleaders who have been acting in the Westover facility for the past several years, compiled by migrant service agencies, show that the majority of the crewleaders which were working in the Westover labor facility were never authorized to house by the Department of Labor, as required by Federal law. A check with the public registry compiled by the Department of Labor suggests that no sanctions have ever been applied to crewleaders operating in the Westover facility without obtaining housing authorization. A check with the public registry shows that the Somerset Growers, Inc., is not regis-

tered as a farm labor contractor and has never been cited under the terms of FLCRA.

Madam Chairwoman, from my own knowledge, during this past year there was one crew leader operating in Westover who did not even have a certificate of registration. This crew leader remained undetected by the Department of Labor's compliance officers throughout the entire growing season.

Mrs. COLLINS. Mr. Carr, let me say that you are showing a pattern of this kind of thing, and I am glad that you are pointing it out.

I wonder if we could turn to Mr. Read at this time and get his summary so that we can begin asking some questions.

Mr. CARR. I will be glad to yield to Mr. Read.

Mrs. COLLINS. Thank you.

Mr. Read?

Mr. READ. Madam Chairwoman, I am very happy these hearings are being held today, and I would like to express my personal thanks to Congressman Maguire as well because I am aware that his initial call for these hearings followed the attack on me by a farm labor contractor in New Jersey in which I was nearly killed.

I am, relatively speaking in terms of the people with whom I am testifying here today, a novice in terms of the rights of migrant farmworkers. My own background is in having been a union attorney for a law firm in New York for several years, and I have only begun farmworkers' work since last May.

In that time, however, I must say that I have come to realize that, in fact, the conditions of migrant farmworkers are still amongst the worst of any workers in this country.

When we hear from the grower interests, particularly the corporate grower interests, of overregulation and farmworkers having many other sources of rights, it is hard for me to believe that those statements are put forward with a straight face at all. In fact, the Farm Labor Contractor Registration Act is virtually the only law which gives substantive protections to farmworkers and which gives them a right of action to enforce those rights.

I might add that it took me approximately a week to learn all the laws that govern migrant farmworkers, basically, backwards and forwards: The Fair Labor Standards Act, the Farm Labor Contractor Registration Act, and to some extent the Wagner-Peyser Act, and OSHA. Other than these laws, there is basically no law governing migrant farmworkers. In most States, there are no protections for the rights of agricultural workers to organize.

Madam Chairwoman, when we look at the statistics of the growers on failure to enforce FLCRA, we agree that the U.S. Department of Labor has failed to enforce FLCRA. We do not agree, however, that that means that there are no abuses.

When we look at statistics that talk about technical violations, we agree that the U.S. Department of Labor generally finds only technical violations. Where we disagree is that we feel that that is due to improperly trained, improperly staffed U.S. Department of Labor offices in which individuals are not trained to look for the serious violations.

In particular, in relation to Mr. Marcos Portalatin, Mr. Portalatin is a 44-year-old 300-pound labor contractor. For 20 years he has operated in the South Jersey area. As detailed in my statement, amongst

other things, he attacked a paralegal from my office 5 years ago; he attacked a State assemblyman from New Jersey 5 years ago; he was tried on slavery charges 5 years ago. On all of those charges except one, he was acquitted, which speaks to the effectiveness of criminal law. In the one case, he was given a $25 fine for drawing a knife on someone from my office and chasing them off the farm.

Mr. BUTLER. Perhaps I might make an inquiry here. Of course, I do not know a thing about this, except for your testimony, but the first presentation is that he attacked a paralegal from the Camden regional office with a knife when the paralegal came to the farm where he was crewleader to speak to workers there.

Does the Legal Services Corporation go on to the farms and try to do this presentation—or whatever you do? Do you do that on the man's property itself?

Mr. READ. Mr. Butler, I do not want to get into what I consider to be a peripheral point in this hearing, however, the Supreme Court of the State of New Jersey in a case involving the Camden Regional Legal Services, a case called *State* v. *Shack*, held that there is a right for migrant workers to have representatives from agencies such as Legal Services and such as a social services agency come into migrant labor camps in order to speak to individuals there. That is a well-established right in New Jersey which was established before 1974. I believe the case dates back to approximately 1971.

New Jersey is one of the few States, I would note, where such a right of access has been recognized by the courts and is at this point, as a matter of law, unquestioned.

Perhaps I could go on to the principal areas involved here.

This year, we learned that Mr. Portalatin was operating in Delaware, and we subsequently learned that he was coming back into New Jersey. At this time, his operation was as an apparent regular employee of a corporation, someone who would, under the amendments that are being proposed, be exempt altogether from the provisions of the act. He worked for a corporation called Leonard Farms Corp., a Delaware corporation which had its principal headquarters in New Jersey and which had rented approximately 10 fields in Delaware for asparagus operations.

Mr. Portalatin was apparently asked to recruit 30 to 40 workers, who were all, I will note, illegally recruited in Puerto Rico from laws which require recruiting to go through the Puerto Rico Department of Labor.

Mr. Portalatin, according to our clients—and we now represent approximately 24 of his former workers—made promises to the workers that they would clear from $180 to $200 a week, that they would have excellent living conditions, they would have 6 months of steady employment, that they would have a day off a week. These representations, I would note, were virtually uniformly made to workers who were in their teens, who did not speak English, who had never before worked on the U.S. mainland.

These workers came to the United States, and they found very different living conditions and very different working conditions. They were worked up to 80 or 90 hours a week 7 days a week from 5 in the morning to as long as 5 p.m., with a 3-minute break at about 10 in the morning and a 5- to 10-minute break at about noon for food. Other

than that, these workers worked nonstop. They were not allowed to leave the camp. The only time they were allowed to leave the camp was when they went to a coin laundry where Mr. Portalatin would patrol to make sure they did not leave.

These workers were paid at the end of their first week of employment—many of them—as little as a penny after deductions were made by Mr. Portalatin.

I have noted, in relation to the proposal by the growers, that payment by check does not solve this problem. Back in New Jersey, these same workers were paid by check by the farmer. However, Mr. Portalatin would not give the checks to the workers until they signed them over to him, he cashed them, and took the deductions out of those checks. That I can testify to personally because at the time when I was in Mr. Portalatin's kitchen to pick up paychecks, that was exactly what he wanted me to do. Out of a $58.50 check for one worker, he wanted me to sign the check on behalf of the worker, return $57 to him, and he would give the worker $1.50. This is how checks will work. Checks are not a solution.

In relation to the comments of Mr. Carr on the U.S. Department of Labor and Mr. Portalatin, we discovered that the U.S. Department of Labor found out about Mr. Portalatin's operations before we did—in May 1979—that they went into the camp, and that they did not speak to workers, that they did not obtain the books and records, that they did nothing other than determine that Mr. Portalatin was an unregistered contractor, told him that he should register, explained to him his obligations under the act, and then made a decision that no further action would be taken, except for the assessment of some minor civil penalties.

Immediately following that, Mr. Portalatin again sent his daughter to Puerto Rico and recruited another group of workers and treated them similarly badly. Again, no correct representations of employment, no written representation, et cetera.

Mrs. COLLINS. Mr. Read, let me ask you about Mr. Portalatin. Does not word get back to Puerto Rico that if you are dealing with this guy you are going to be heading for trouble? How can this recur year in, year out?

Mr. READ. Perhaps I can explain how that happens.

The recruitment in this case is largely in a small mountainous village in Puerto Rico called Cidra which has perhaps 3,000 to 4,000 people spread out over a large area. Except for one worker, whom I would refer to as one of Mr. Portalatin's henchmen, there was no one who had worked for Mr. Portalatin from that village.

Mr. Portalatin came in—he can be a charming man as long as he is not being violent—and made various promises to the workers that they had no reason to disbelieve. These are young men. As I said, most of them were 16 to 20 years old and had never before had any contact with him.

Puerto Rico is a relatively spread out island with very poor communications, and it was not difficult in Puerto Rico.

Mrs. COLLINS. All right. Thank you.

I am just plain shocked at what I have read in your testimony and what has been pointed out here. There were workers who received one penny or no pay at all. I find this very disturbing. I think I read

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in one of these statements that workers had been beaten—in your testimony, I believe, Mr. Read.

Mr. READ. The Portalatin workers.

Mrs. COLLINS. Yes; they had been beaten. I find this appalling. I just do not know what to say about it. But I do have some questions that I want to ask.

It is my understanding that growers contend it is expensive for them to maintain housing because the housing will be used for maybe 5 or 6 weeks. What is your comment on that?

Mr. ABBOTT. Maybe Mr. Carr can answer that.

Mrs. COLLINS. Mr. Carr?

Mr. CARR. Madam Chairwoman, the Farmers Home Administration makes available through sections 514 and 516 of the 1949 Housing Act low-interest loans to any grower association which would like to build decent, sanitary, and safe housing for migrant workers who are working for those growers.

Under the present administration of Mr. Gordon Cavanaugh, the current Administrator of the Farmers Home Administration, the Farmers Home Administration is extremely anxious to make sure that all of the money which the Congress of the United States has authorized for this housing be distributed to people who can manage this kind of housing. In fact, in my part of Maryland, Farmers Home has been trying for some years to find somebody to build a decent, sanitary, and safe labor camp. But, in fact, they cannot find anyone to do that.

Mrs. COLLINS. Why?

Mr. CARR. The growers refuse to be responsible or to be individually liable on a 1-percent note. What they are doing is making a very cold-blooded economic calculation. They are saying to themselves that they are going to have to pay less money by risking exposure to those other conditions of the labor camps in southern Maryland; they are preferring that economic possibility over having to pay a 1-percent note.

Mrs. COLLINS. What do you think would happen if housing laws were to be vigorously enforced?

Mr. CARR. Well, Madam Chairwoman, since the growers appear to be engaging in this economic calculus, the only thing I can suggest is that the Department has to become more vigorous in enforcing the OSHA standards.

Mrs. COLLINS. Do you think that the growers will tear down the old substandard housing and build new housing, if the law is vigorously enforced?

Mr. CARR. I would think that would have to be one alternative they would want to consider.

Mrs. COLLINS. Would there be other alternatives if the law were vigorously enforced?

Mr. CARR. There have been occasions where growers have just left their crews without any housing at all, but I do not see how growers operating in Maryland could recruit workers in South Florida if they made adequate disclosure to them, showing that there would be no housing.

Mrs. COLLINS. So, if the law were vigorously enforced, the likelihood would be that the growers would build safe and sanitary housing?

Mr. CARR. I believe that most growers are not wholly malicious, and I believe that is what they would prefer to do.

Mr. READ. I would also note, Madam Chairwoman, that one of the other issues is maintenance of housing which is built.

Mrs. COLLINS. I have read that some of the growers say that workers tear the housing down, they destroy the walls, they break up the toilets, and so forth. What is your comment on that?

Mr. READ. Madam Chairwoman, in that regard, let me indicate that I have here some photographs of housing in New Jersey; each of which has on the back a commentary on what the photographs represent. I can also give you additional copies of the commentaries.

[Photos shown.]

Mrs. COLLINS. What are your comments on the statements that some of the workers tear the housing down?

Mr. READ. The growers house a very large number of individuals in a very small space for a period of time. In the Portalatin camp, for instance, workers had no space to put clothes; their beds were 2 feet apart; as many as 30 or 40 workers were housed in housing which, according to OSHA standards, should only house seven workers.

Under those kinds of conditions, it is virtually impossible for things like toilets not to breakdown; it is virtually impossible for housing to remain in good condition when it is overutilized. And that is precisely what happens.

Mrs. COLLINS. Is overcrowding typical?

Mr. READ. Overcrowding is one of the things which OSHA standards would address if they were correctly enforced.

Mrs. COLLINS. But you do not know if it is typical?

Mr. READ. I believe overcrowding is a typical problem.

Mrs. COLLINS. But you do not have data on that?

Mr. CARR. There cannot be any data because there has not been any systematic effort by any agency of government to measure the farmworker population, to accurately depict the living conditions.

Mr. EBBOTT. Madam Chairwoman, let me add to that if I may that maintaining proper housing is a cost of doing business, just as maintaining proper machinery is a cost of doing business. Some of the machines that agribusiness maintains are used no more during the year, in fact maybe a shorter period during the year, than the hand-harvest labor that is used. I do not hear too many complaints—although maybe in private they make them—from agribusiness about the increasing cost of a shorting combine, for instance, or a corn sheller. But there are constant complaints about the cost of maintaining housing for human beings, and I just think they put their priorities on the cost of doing business in the wrong place.

Mrs. COLLINS. In your opinion, how many camps are substandard?

Mr. EBBOTT. A number of a percentage?

Mrs. COLLINS. A percentage.

Mr. EBBOTT. Well, if the standard is a state or federal code, I would say about 80 or 85 percent.

Mrs. COLLINS. What would you base that on?

Mr. EBBOTT. I guess on my experience in working with farm labor housing in Wisconsin. For seriously substandard, the percentage will go down somewhat. But since there has been no survey, it is difficult to really come up with an absolute number or a percentage, but the best I can do for you to be accurate is to say a majority.

Mrs. COLLINS. I was very interested when I read about your experience here, that you say on page 2, that all of the workers are exploited in the recruitment process. Do you really mean all of them? This is on page 2 of your full statement, Mr. Ebbott, four lines from the top. Please elaborate on that for me.

Mr. EBBOTT. The basis for that statement is, again, my experience and the experience we have accumulated based on surveys of farmworkers around the country by farm labor attorneys and paralegals. I think we can say that there is no case of recruitment in the country where there is not some case of exploitation involved.

I do not know where you could ever come up with a case of complete, full disclosure of all the meaningful wages and working conditions. That is what I mean by exploitation. The workers have a right to know exactly what they are getting into, and when they are shown something less than that, they are misrepresented or exploited.

Mrs. COLLINS. But do not some of the workers go back to the same camps year after year? Do they not know what conditions are going to be before they leave wherever they are coming from?

Mr. EBBOTT. No, not necessarily.

I had a case where the workers were at one corporation for one harvest season. There was a certain number of acres they were harvesting. Before they left that year, they were told, "Come on up next year; we are going to have the same number of acres and crops." So they thought they knew what the conditions were. They came up the next year, and because of a decision by management, there was half that number of acres and much less work.

So, it is not at all the case that, because they have been there 1 year, they are going to know what the conditions are the next year.

Mrs. COLLINS. But then they go back the third year to that same camp.

Mr. EBBOTT. Sometimes they do not; sometimes they do.

Mrs. COLLINS. Knowing they have been fooled once, or misled once, why do they go back? It is my understanding that there is a pattern of workers going to the same camp year after year.

Mr. EBBOTT. They do not have a great deal of job selection opportunity. They have to make really hard choices, and although they may be exploited 60 percent by one employer, that is better than some of the other employers available. So, there is not that much that the workers can really do to create an exploitation-free environment.

Ms. COLLINS. Do these workers not begin to know who the recruiters are, who the crew leaders are in these various places? They travel throughout the areas year after year. It would seem to me—and tell me if I am wrong—that once recruiter *x* has taken workers to some place where they have been improperly fed, where the housing is awful, when he comes back into that area again, those people are not going to want to go with him to the place he is supposed to be recruiting people for. Do you find this happening? Or do they just blindly say, "We will just see what is going to happen?" I just do not see a human being doing that.

Mr. EBBOTT. Mr. Carr would like to answer that.

Mrs. COLLINS. Mr. Carr?

Mr. CARR. First of all, I have to take exception with the perception that there is a pattern of workers returning to the same labor camps

year after year. If workers do repeat, I can tell you from my experiences of living in Florida for 19 months, it is the conditions of dire poverty in one of the most depressed areas in the entire United States, which force these people to leave south Florida at the end of the Florida growing season. They have no choice; they must leave.

As far as developing knowledge as to who the bad crew leaders are, I have found many farm labor contractors with a strange reticence in identifying themselves fully to the members of their crew.

When I moved into the area, one of my first experiences was a farmworker coming into my office and saying he had been working for a man named Sunset. He did not know anything more about that farm labor contractor.

If the committee would like, we could probably document several hundred instances of people coming into contact with contractors for the very first time and being subjected to these kinds of abuses.

Mr. READ. I would also note, Madam Chairwoman, that that is one of the reasons why Congress requires fingerprinting, which so much fun has been made of by the grower interests. It is because many of these people might use false names in the registration process otherwise, and it is therefore a necessary enforcement tool in the law.

Mrs. COLLINS. Thank you.

Mr. BUTLER. Thank you, Madam Chairwoman.

I have interrupted several times, so I will not take but a second. But what is not clear to me is exactly the role of the Legal Services Corporation with the Department of Labor.

The Department of Labor, of course, has the responsibility for enforcement. Do you have a resource center? Where are you located?

Mr. EBBOTT. Here in Washington.

Mr. BUTLER. How large is your staff?

Mr. EBBOTT. We are about 10 attorneys.

Mr. BUTLER. Here in Washington?

Mr. EBBOTT. That is right.

Mr. BUTLER. And you provide technical assistance to the employees of the Legal Services Corporation, like in Maryland, New Jersey, and thereabouts?

Mr. EBBOTT. That is correct.

Mr. BUTLER. Is it your feeling that when the Department of Labor fails in its enforcement responsibilities, you—the attorneys—should then go out and substitute for the Department of Labor in enforcement? As a support center, what do you advise your lawyers that your relationship with the Department of Labor should be?

Mr. EBBOTT. The relationship should be a complementary one. Migrant farmworkers have a private cause of action for money damages under the statute, and that is a good thing. So, what we advise field people is, if possible, to establish a working relationship with a local area officer or compliance officer in a particular area, to work together on these abuses.

But what frequently occurs is that the Department of Labor is not there or is not there with sufficient thoroughness or speed, and they become useless in terms of protecting the farmworkers' rights, and we have to go to court and sue on the farmworkers' behalf.

Mr. BUTLER. Going to court, I think, is an appropriate thing for a lawyer to do for his client. I just wonder whether it is an appropriate thing for you to take an assignment and go into his kitchen and challenge him, knowing that he has already stabbed one of your cohorts with a knife.

Mr. READ. May I comment as a point of personal privilege, Mr. Butler?

Mr. BUTLER. Your personal privilege was going into the kitchen?

Mr. READ. No, sir.

The reason we were there was that we were at the invitation of the crewleader to pick up paychecks. There was no intention to challenge.

I do not want to go into the facts of the case at length because there is an assault with intent to kill charge pending in criminal court in the State of New Jersey. But I do take exception to the characterization you make.

Mr. BUTLER. Well, you are privileged to do that, but I think it is extremely poor judgment.

Mr. READ. But you should attempt to study the facts a little more before making those kinds of characterizations.

Mr. BUTLER. I thank you, and you are, of course, privileged to put the facts in the record, but I want to note that it is pretty poor judgment.

Now, we are getting to the question of civil relief. What about the use of the private cause of action that you mentioned before? How often are you doing that? It seems to me that that is what the Legal Services Corporation ought to be doing if the Department of Labor fails. So I would like to know what you are doing in this regard.

Mr. EBBOTT. We are doing that, Mr. Congressman.

I would like to just briefly respond to the first question. It is our obligation before we go to court to try to work out and negotiate things with the potential defendant. We are not supposed to run right into court on any issue. So, it is perfectly appropriate, and we are obligated, to go work out these arrangements before we run into court. That is what Mr. Read was doing.

We are using the private cause of action, and it has been fairly effective for us. One of the concerns is that, if these amendments go through, the heart will be cut out of the Farm Labor Contractor Registration Act; there will be nobody left to use it against to give us any relief.

Mr. BUTLER. Mr. Carr, how often have you brought a course of action under section 12(a)?

Mr. CARR. Section 12(a)?

Mr. BUTLER. The civil relief section.

Mr. CARR. I could not tell you the number of cases I have filed. I estimate that I have worked on at least 25 cases.

Mr. BUTLER. And how often have you filed suit?

Mr. CARR. The 25 cases which I referred to are cases which are in litigation.

Mr. BUTLER. They are in the courts now?

Mr. CARR. Right. It is not a simple, cut and dried matter. It does not work that you just file a complaint, one simple complaint, and let the matter go at that. Like other lawyers, we consult with our colleagues

and try to help such other out on litigation problems as these cases develop.

Mr. READ. Mr. Butler, I would also like to note that one of the reasons we file complaints with the U.S. Department of Labor on behalf of our clients is the criminal provisions of the act.

In relation to Mr. Portalatin, we have asked the U.S. Department of Labor to pursue an active investigation for the possibility of seeking criminal sanctions. That is one of the responsibilities of the U.S. Department of Labor which we, as private attorneys representing private litigants, cannot enforce. Therefore, it is necessary to proceed by that route, as well as the injunctive penalties under the act which would strip an unscrupulous farm labor contractor of his registration.

Mr. BUTLER. Excuse me; I do not know about the injunctive penalties. Is the Department of Labor privileged to go to court for an injunction?

Mr. EBBOTT. Yes; it is.

Mr. BUTLER. And how often have you been successful in persuading them to do that?

Mr. CARR. I am unaware of any case where the Department has done that.

Mr. READ. But they do have civil injunctions against certain individuals. Generally speaking, my understanding—and I have not been involved in any of these—is that these are frequently entered into as consent judgments where the individual says, "I will not in the future do 'x.'" The problem is followup enforcement of those consent judgments, whether they are followed up by the Department of Labor to see, in fact, whether that person continues to do that.

Mr. EBBOTT. In addition, there is no admission of liability, generally, with a consent judgment, so it is not possible to build a record of repeat violations so that more serious sanctions can be imposed.

Mr. BUTLER. These consent decrees that we are talking about, have they, in your experience, been employed in New Jersey, Delaware, or Maryland?

Mr. CARR. There are a large number of civil injunctions voluntarily entered into between the Department of Labor and a large number of farm labor contractors in Maryland and Delaware.

Mr. BUTLER. You mean they are not in the Federal court system?

Mr. CARR. They are in the Federal court system, but basically they do not have much effect.

Mr. BUTLER. They do not have much effect until the second time around.

Mr. CARR. Even then.

There is a crewleader named Harold Beaver that I had some working relationship with in south Florida who was the subject of injunctive action by the Department of Labor. After an extensive effort to try to get the Department of Labor to seek contempt sanctions against Mr. Beaver, they finally did obtain a $250 fine against him for that contempt; payment of court costs. I believe, in North Carolina. I believe Mr. Beaver realizes more than that amount in 1 week's operation.

Mr. BUTLER. Mr. Read, how many times, just for the record, have you filed suit under section 12 for civil relief?

Mr. READ. Sir, it is the policy of our office, when we feel that there are appropriate suits, to file suits. As I said, I have only been associated with the Camden Regional Legal Services since last May. We have currently in the office a lawsuit, with which I am involved, with Puerto Rico Legal Services involving Mr. Portalatin and the farmers employing him and members of his family.

We also have a major Farm Labor Contractor Registration Act lawsuit pending against the major grower association in New Jersey, Glassboro Service Association.

I would note in relation to the cooperation between us and the Department of Labor, there is litigation covering most of the previous 10 years of Glassboro's operations in relation to activities as employers to deprive their employees of their rights. Recently, I believe, the Department of Labor has recovered $300,000 in backpay settlements for money illegally deducted from workers' pay by the growers' association and some 300 farmworkers.

Mr. BUTLER. It is your practice to suggest to individuals that they file suits under this section?

Mr. READ. Mr. Butler, it is our practice to pursue all available legal remedies to bring our clients their rights. These include persuading agencies which can bring criminal prosecutions to pursue those prosecutions; that includes persuading governmental agencies which enforce those laws to enforce those laws; and that includes going into court on behalf of those clients.

Mr. BUTLER. Have you ever filed a suit as an attorney for an individual migrant worker under this section?

Mr. READ. Yes, sir.

Mr. BUTLER. How often?

Mr. READ. I just indicated that we have.

Mr. BUTLER. I am always getting the policy from you. I am just trying to find out how many times you have done it.

Mr. READ. I was trying to indicate to you that there are two particular lawsuits which I am involved in from our office currently pending under the Farm Labor Contractor Registration Act.

Mr. BUTLER. And since you have been there, have you filed any suits as attorney for these people under this section?

Mr. READ. Yes; again, it is a lawsuit against Mr. Portalatin on behalf of a number of his workers, which is filed in the U.S. District Court in Puerto Rico.

Mr. BUTLER. In Puerto Rico?

Mr. READ. Yes, sir; that is where the workers were recruited.

Mr. BUTLER. Just for the Legal Services Corporation, do you go to Puerto Rico and prosecute this, or how does that work out?

Mr. READ. We have cocounsel in Puerto Rico and Puerto Rico Legal Services.

Mr. BUTLER. All right.

Thank you.

Mrs. COLLINS. Mr. Maguire?

Mr. MAGUIRE. Thank you, Madam Chairwoman.

Gentlemen, I thank you for your testimony.

I wonder if we could talk a little about sanctions. You have made the point in your testimony that the emphasis is on registration and there is a lack of emphasis on sanctions, and this creates a situation in

which very little actually ends up being done about the violations that occur.

We also have specific cases like the Portalatin case which just cry out for some kind of remedial action. To read your account, Mr. Read, of what I would refer to as an atmosphere of terror as a principal operating factor: threats, acts of violence, and so on. And then we have a situation in which, years later, that is still going on, on the one hand; and then, on the other hand, we have all these figures you have given us about the number of actions taken by DOL and the number of times that fines have actually been set. And, of course, the schedule of fines itself shows us that, once again, there is a tremendous gap between what has been the intent of Congress in enacting this legislation and what is actually occurring in the field.

Let us talk a little more about this issue. Mr. Ebbott, you refer, on page 9, to the civil money schedule, involving a $100 fine for failing to disclose to workers, for example, which would be cut to $50 if you could not prove willfulness.

What kind of schedule would you think would make sense? Right now, there is a $1,000 maximum for the most serious violations. What range of penalties would be more appropriate?

Mr. EBBOTT. At the minimum what should happen with this schedule is that each of these amounts should be doubled, and the 50-percent reduction provision should be stricken. Even then, such a penalty does not make a very substantial dent in the farm labor contractor's income. In addition, that should be assessed per worker. The cost of abuse has to be made approximately equal to the gain that is now made from the abuse.

Mr. MAGUIRE. Yes. If you are doing a strict cost/benefit analysis, I think the point Mr. Carr made earlier, or makes in his testimony, is extremely important. If it costs you a lot less to defy the law for any fair standard of behavior, if you are unscrupulous, or if you are not but are prepared to wink at what somebody else may be doing that you benefit from, there is a tremendous incentive to do it that way.

Moving on to the question of the oral nature of many of these discussions between those who are hiring farm labor and farm laborers themselves, how does one deal effective with the fact that a lot of the transactions are conducted thus?

You have, for instance, had to trace Mr. Portalatin back to Puerto Rico, and I gather the DOL in Puerto Rico was not even willing to help you with that.

What does this suggest ought to be the situation in the law? How do we get closest to dealing with the problem of being able to find out what was and was not said and hold people accountable?

Mr. EBBOTT. There are two approaches to take: The carrot and the stick. One is to conduct an education program, which the Department of Labor says it has been doing with farm labor contractors, to say, "Here is what you do; you use our form;" and you develop a much better form that the Department of Labor has developed. It does not allow for much disclosure at all in the form itself. You make those available.

But that is really not going to be effective until you start deterring; investigating thoroughly enough to see whether the contractors have been disclosing; coordinating between area office and area office

to see when that has been repeated; and investigating to determine whether there has been a willful violation so that you can impose serious criminal penalties.

The first step is the Department of Labor's. That would be to put much more emphasis on disclosure as a serious violation rather than a technical violation. The civil money penalty schedule indicates that it is now considered a rather minor violation.

Mr. MAGUIRE. What about doubling it?

Mr. EBBOTT. That one, I think, should go up to $1,000, but I made a rough recommendation across the board. But the nondisclosure, I think, is critical.

The other thing that can happen in terms of private enforcement is that if more and more farm labor contractors are sued for nondisclosure to a great number of workers, the fact that they cannot produce the written disclosure statement may mean there will be enough of a judgment against that farm labor contractor that there will be a deterrent. But there has to be a two-pronged deterrent action, one by the Department of Labor and one by us, I guess, in recovering substantial judgments for violations.

Mr. MAGUIRE. What is the significance of the fact that only 4.8 percent of the compliance actions were followup investigations?

Mr. EBBOTT. It seems to me, especially when you are enforcing a law such as this in an area where the activity takes place, substantially interstate although often intrastate, if you have a Texas area office and a Wisconsin area office both involved with the same crew leaders, if there is a violation discovered by the Wisconsin area office, that information should be transmitted to the Texas area office with an admonition, "Check this farm labor contractor to see what happens either this year or at the beginning of the recruiting season next year." That is the way that the repeated and the willful record is going to be built so that more serious sanctions can be imposed.

But the significance of this to me, as nearly as I can read the Department of Labor data, is that there is very, very little of that going on.

Mr. MAGUIRE. You cite an OSHA regulation on page 10 of your statement on which the compliance officers of OSHA stood with fieldglasses on the far side of a stand of trees when they were supposed to be looking at the shed and the tents where people were living.

What could possibly explain that kind of behavior?

Mr. EBBOTT. I have to make a correction. The "and OSHA" was not deleted, and it should have been. It should read, "The wage and hour compliance officers," not OSHA.

Mr. MAGUIRE. All right. The wage and hour officers.

Mr. EBBOTT. I have no idea why they stood with binoculars in the field rather than going on to the premises where the workers were, especially since you cannot see through trees.

Mr. MAGUIRE. What would be a plausible explanation for that behavior?

Mr. EBBOTT. I cannot explain it.

Mr. MAGUIRE. You say, on page 9, "We cannot stress enough that these repeat and serious violaters are not limited to the traditional crewleaders but include corporations, associations and their full-time or regular employees who recruit on more than an incidental basis."

My question goes to the subject matter that I discussed with Mr. Ellsworth earlier in the hearing and the question of whether the word "personally" should be taken out of the law, which would have the effect of exempting corporations and people who work for corporations but, nevertheless, are in the business of hiring migrant labor.

You also said at the beginning of your comments that you wanted to deal with the 99 percent/1 percent problem. I am not sure that you have yet dealt with that in any overall way. I do know that in the attachments, the examples from Texas and Illinois in particular do involve corporations and the violations that are committed by employees of those corporations in hiring migrant labor.

How do we get more of a handle on this question of, if you will, the distribution of exploitive activities as between those engaged by corporations to hire labor and others?

Mr. EBBOTT. One of the problems right now is that no one has taken a measurement of that. The reason I challenge the 1 percent/99 percent was that that was used as a premise, and I do not think anyone has measured that. What we have presented here is documentation that indicates the existence of a pattern and practice. Nobody has measured that.

One thing that could be done to get a handle on that aspect is to have someone, whether it is us or another governmental agency, make an analysis of how much of this is done. But right now what we can do is definitely not exempt corporate entities and their fulltime or what they will call "regular" employees from the coverage of the act. There is absolutely no indication at all that so little abuse of this statute goes on that agribusiness is entitled to an exemption.

Mr. MAGUIRE. Of course, one of the curious things about this exemption is that, ordinarily, we are being asked to exempt the little guy from this or that or another law or set of regulations. It looks as if that has been turned on its head now, and we are being asked to exempt the biggest guy.

Mr. EBBOTT. That is the irony of the position that the agribusiness spokesmen have taken today. The small farmer is always used, at least in my experience, by large corporations to gain exemption or relief from the statute. I think the construction of the word "personally" that the Department of Labor has applied makes sense in that regard. There is some indication that, for whatever reason, the small farm was intended to be exempt from this statute. One of the reasons may be that he has less chance to abuse a great many farmworkers or that he has less capability to deal with the registration and requirements such as that in the statute.

With corporations, neither of those are true. Corporations deal with many more farmworkers; there is the potential for much more widespread abuse of farmworkers; and they have the resources—the accountants, the auditors, the personnel managers—who deal all the time with regulatory statutes such as this.

Mr. MAGUIRE. Have you looked at the question of how easy it would be for people hiring farm labor to convert to some sort of corporate status if the law were to be rewritten to exclude corporations? Is it easy or difficult?

Mr. EBBOTT. It is easy. People do it all the time, of course, for tax purposes. What would be especially easy would be to call your independent contractor a "regular employee" and insulate both the corporation and the people who recruit for it. That is the easiest thing in the world.

Now, there is some use of contractors. People who are called foremen or fieldmen are called contractors in an attempt to insulate the growers. If there is a loophole—an exemption—available for the corporation, there would be no problem to call a "contractor" a "foreman" or a "fieldman" or a "regular employee."

Mr. MAGUIRE. That would assume, though, that you had an employer who was willing to do that.

Mr. EBBOTT. The incentive for that is, if you do not deal with a covered contractor under the statute, you as an employer are not liable for engaging the services of an unregistered farm labor contractor and you are not liable for failing to obtain the records that that contractor must keep. So, there is an incentive for the change in the nomenclature.

Mr. MAGUIRE. If you had the exemption.

Mr. EBBOTT. Right.

Mr. MAGUIRE. So, that might create a situation where it would appear to be in the interests of both the itinerant farm labor contractor and the ultimate employer to arrange their affairs so that they would be exempted, and all of their activities would be exempted from the law.

Mr. EBBOTT. The fact that they would do that is demonstrated by the Portalatin affair where, in an investigation by the Department of Labor, the corporate employer said, "This is my regular employee, not a crewleader."

Mr. MAGUIRE. I wanted to ask about that. Portalatin apparently worked out a relationship like that with one of his employers in New Jersey, but what would have been the utility of doing that under the law as it now stands, which does not permit this exemption of corporate employees?

Mr. READ. The law now reads, "activities done personally," and then as to the employees, "on a no more than incidental basis." There is still the argument at least that the corporation is not acting personally. It provides a gray area in which someone can argue, "Well, I was not willfully violating the law because I was relying on this gray area." That is one of the problems with carving out the exemption; it creates people who would clearly be exempt. Now, "on a no more than incidental basis" should make it clear that people such as Portalatin should still be covered.

Mr. MAGUIRE. Even under existing law, there was a legal angle that Portalatin might have been able to exploit, together with the company to which he was related, on the grounds that he would have been acting personally.

Mr. READ. I would note that the Leonard Farms Corp., has now registered as a farm labor contractor, and Mr. Portalatin, after he was allegedly fired by the company, went to register as a farm labor contractor employee of the corporation.

Mr. MAGUIRE. You would also, would you not, if you had two classes of entities under the law, one that would be covered and one that

would not, presumably, encourage people to misrepresent the facts? You cite a Michigan case in your addendum, Mr. Ebbott, where that has already occurred under existing law, and the compliance officer apparently accepted it at face value. Is that correct? Can you tell us more about that?

Mr. EBBOTT. That is correct.

I can easily see an example in Illinois where the canning corporation refers out workers to other growers between crops. Now they advertise that the workers are available, and they actively facilitate that. Once that exemption is available, you can see where they would just take a passive stance and would not advertise any more and would not spread the word around actively. The workers would be in there in the housing, and the rejoinder if you said that they were farm labor contracting would be, "We don't know what goes on between the workers and the growers; the growers may come in contact with them and hire them a way; they are just residing in our housing until the next crop."

You can see how easy it would be to obfuscate what was really going on if the exemption was there.

Mr. MAGUIRE. Thank you.

Madam Chairwoman, I am sorry Mr. Ellsworth and Mr. Shaw are not still available to us here because I would like to ask them——

Mrs. COLLINS. I believe they are still here.

Mr. MAGUIRE. Well, perhaps we could just direct a question to them to be answered in writing with respect to the question of the likelihood of conversion of itinerant farm labor contractors to some sort of corporate status, or that of the danger of misrepresentation as a result of some of the suggestions they have made with regard to policy this morning and elsewhere.

Mrs. COLLINS. Without objection, their response will be included in the record at this point.

[The material follows:]

NATIONAL COUNCIL OF AGRICULTURAL EMPLOYERS
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January 16, 1980

Mrs. Cardiss Collins, Chairwoman
Subcommittee on Manpower and Housing
Committee on Government Operations
B-349A Rayburn House Office Building
Washington, D.C. 20515

On November 13, 1979, Mrs. Collins,

your Subcommittee held hearings regarding the enforcement of farm labor laws by the U.S. Department of Labor. During that hearing, and subsequent to my appearance as a witness, Congressman Maguire, referring to me, Mr. Myers and Mr. Shaw, as witnesses said:

> "Well, perhaps we could just direct a question to them, to be answered in writing, with respect to the question of the likelihood of conversion of itinerant farm labor contractors to some sort of corporate status, or that of the danger of misrepresentation as a result of some of the suggestions they have made with regard to policy this morning and elsewhere."

This letter responds to that request.

In response to the question of whether an itinerant farm labor contractor could avoid or evade compliance with the law by assuming corporate status, i.e., by becoming incorporated, the answer is clearly "No" because since the farm labor contractor is neither a "nonprofit charitable organization" within the meaning of 3(b)(1) nor a "farmer, processor, canner, ginner, packing shed operator or nurseryman" within the meaning of 3(b)(2), he would not be eligible for either of these exemptions.

The second question asked was whether, by removal of "on no more than an incidental basis" from Section 3(b)(3) of the Farm Labor Contractor Registration Act, an itinerant farm labor contractor (crew leader) could become a full-time or regular employee of a farmer, processor, canner, ginner, packing shed operator or nurseryman and, by so doing evade or avoid compliance with the law.

Agricultural employers have sought deletion of the words "on no more than an incidental basis" from Section 3(b)(3) of the Farm Labor Contractor Registration Act because the interpretation of the phrase and enforcement by the Department of Labor has resulted in forcing employees

who are already full-time or regular employees to register as farm labor contractors even though they spend a minimal amount of their time in farm labor contracting activities and are by no stretch of the imagination crew leaders. We have repeatedly stated that we favor requiring itinerant farm labor contractors (crew leaders) to register under the Act.

Our desire to delete "on no more than an incidental basis" does not arise from a desire to convert itinerant farm labor contractors (crew leaders) to some sort of corporate status. Our desire to delete "on no more than an incidental basis" is based on the Department's forcing those who are already corporate employees to register. Field foremen or other agricultural employees already hired, have had to register because they expend as little as one hour per day (and often less) transporting workers on the farm or in the grove or orchard.

The term "incidental" has been interpreted as "accidental" by the Department.

Let us assume, for the sake of argument only, that an itinerant farm labor contractor were hired each year by an agricultural employer as a regular seasonal employee to perfrom the function of field foreman. At that time he would cease to be a farm labor contractor. He would have no crew of his own. He would be a direct employee of the employer. The workers he would supervise would be the direct employees of the employer, hired by the employer. An employee is an agent of the employer when he acts within the course and scope of his employment. The corporate employer by making this individual a "full-time or regular employee" assumes full responsibliliy for his acts and actions and for any violations of the law the employee may commit. The corporate employer has a fixed situs. It is amenable to legal process and subject to law enforcement procedures under both federal and state law. The corporate employer also, be it a farmer, processor, packer, or whatever, presumably has assets and is financially responsible. It would certainly appear that under these circumstances the agricultural employee has far greater protection against abuses or exploitation than he would have if he were required to look to an itinerant farm labor contractor, whether that farm labor contractor was registered or not. Merely requiring the farm labor contractor to be registered and hold a certificate under the Act affords this employee little, if any, protection, if that farm labor contractor is here today and gone tomorrow, and if he is financially irresponsible and has no fixed situs, and if he is not amenable to legal process.

In the assumed situation the employer would be responsible for housing, if any. The employer would be responsible for fair and accurate pay and payroll records. The employer would be responsible for obeying the Federal law and his State laws. The net result would be the elimination of the crew leader as such, and that is not at all bad.

Possibly the question being raised is this: Can the Act be avoided or evaded by an employer by making the itinerant farm labor contractor a full-time or regular employee? The answer is obviously "No" for the reasons indicated above. By making the contractor a full-time or regular employee the employer assumes full responsibility for his acts, actions and derelictions. By seeking the 3(b)(3) exclusion the employer assumes full responsibility for the actions of the crew foreman, whereas if the crew foreman were an independent contractor the employer would incur no responsibility other than to see that the contractor was properly licensed. Thus the elimination of the language, "on no more than an incidental basis", does not in any way diminish the protection that the agricultural employee has under the law, but rather it increases that protection to the extent that the employer assumes responsibility for the actions of the crew leader.

Employers, however, are not seeking opportunity to pursue that course of action. Employers seek only to have their full-time or regular employees out from under the onerous requirements that come with being forced to register as farm labor contractors (fingerprinting, reporting their earnings to other workers, carrying insurance equal to that required of interstate common carriers and the like).

We appreciate the opportunity to provide this information for the record.

Sincerely,

Perry R. Ellsworth
Executive Vice President

PRE:ta

Mr. MAGUIRE. Thank you, Madam Chairwoman.
Mrs. COLLINS. Thank you.
I have no further questions. Thank you very much.
Mr. EBBOTT. Thank you.
[The prepared statements of Messrs. Ebbott, Carr, and Read. follow:]

68-643 0 - 80 - 6

TESTIMONY

OF

JOHN F. EBBOTT
MIGRANT LEGAL ACTION PROGRAM, INC.

GEORGE CARR
LEGAL AID BUREAU OF MARYLAND

ARTHUR READ
CAMDEN REGIONAL LEGAL SERVICES

BEFORE THE COMMITTEE ON
GOVERNMENTAL OPERATIONS

SUBCOMMITTEE ON MANPOWER AND HOUSING

UNITED STATES HOUSE OF REPRESENTATIVES

NOVEMBER 13, 1979

I. INTRODUCTION

MY NAME IS JOHN F. EBBOTT. I AM THE LITIGATION DIRECTOR OF THE MIGRANT LEGAL ACTION PROGRAM, LOCATED HERE IN WASHINGTON. WITH ME THIS MORNING ARE ATTORNEY GEORGE CARR, WITH THE LEGAL AID BUREAU OF MARYLAND OFFICE IN SALISBURY, MARYLAND, AND ATTORNEY ARTHUR READ, WITH THE CAMDEN REGIONAL LEGAL SERVICES OFFICE IN VINELAND, NEW JERSEY. WE THANK THE MEMBERS OF THE SUBCOMMITTEE AND THE SUBCOMMITTEE STAFF FOR GIVING US THE OPPORTUNITY TO TESTIFY THIS MORNING ON ISSUES OF SUCH IMPORTANCE TO OUR FARMWORKER CLIENTS.

II. OUR EXPERIENCE

MR. CARR, MR. READ AND I ARE ALL LEGAL SERVICES ATTORNEYS WHO REPRESENT MIGRANT FARMWORKERS ON A VARIETY OF

ISSUES, INCLUDING CLAIMS UNDER THE FARM LABOR CONTRACTOR REGISTRATION ACT. SOME OF OUR CLIENTS TRAVEL FROM STATE TO STATE TO FIND WORK. OTHERS ARE RECRUITED THROUGH THE DAYHAUL SYSTEM. MOST WORK ON A SEASONAL BASIS. ALL ARE EXPLOITED IN THE RECRUITMENT PROCESS. OUR TOTAL MIGRANT CLIENTELE NUMBERS APPROXIMATELY 1.5 MILLION. WHEN SEASONALS ARE ADDED, OUR TOTAL CLIENTELE NUMBERS APPROXIMATELY 5 MILLION. (SEE LILLESAND, KRAVITZ AND MCCLELLAND, "AN ESTIMATE OF THE NUMBER OF MIGRANT AND SEASONAL FARMWORKERS IN THE UNITED STATES AND THE COMMONWEALTH OF PUERTO RICO", LEGAL SERVICES CORPORATION, MAY 1977).

MY PROGRAM, THE MIGRANT LEGAL ACTION PROGRAM, IS A NATIONAL SUPPORT CENTER WHICH PROVIDES TECHNICAL ASSISTANCE TO FARMWORKER ATTORNEYS AND PARALEGALS AROUND THE COUNTRY.

FARMWORKER ATTORNEYS ARE IN THE FIELD EVERY DAY, TALKING WITH MIGRANT FARMWORKERS, INVESTIGATING ALLEGED ABUSES, NEGOTIATING WITH GROWERS AND PROCESSORS, AND FILING ADMINISTRATIVE COMPLAINTS AND LAWSUITS WHERE APPROPRIATE. IN THE COURSE OF THIS WORK WE HAVE COLLECTIVELY ACCUMULATED A GREAT QUANTITY OF EXPERIENCE WITH THE LABOR RECRUITMENT PRACTICES OF AGRIBUSINESS AND WITH THE DEPARTMENT OF LABOR'S ENFORCEMENT OF THE FARM LABOR CONTRACTOR REGISTRATION ACT. IT IS THIS EXPERIENCE WHICH WE WOULD LIKE TO SHARE WITH THE SUBCOMMITTEE TODAY.

WE BRING NO OVERWHELMING POWER OR SPECIAL INTEREST GROUP INFLUENCE TO BEAR ON THESE ISSUES, FOR FARMWORKERS HAVE NO SUCH POWER OR INFLUENCE. WE BRING ONLY THE FACTS AS WE KNOW THEM AND REASONED ARGUMENTS IN SUPPORT OF OUR CLIENTS' INTERESTS. AND, WE ARE QUITE WILLING TO TEST THESE ARGUMENTS IN AN OPEN HEARING SUCH AS THIS.

III. Current Recruiting Abuses

Mr. Chairman and members of the Subcommittee, many of the abuses which the Farm Labor Contractor Registration Act was enacted to remedy still occur today, and one of the major reasons for this is the terribly inadequate enforcement of the Act by the United States Department of Labor (DOL). These abuses are perpetrated not only by individual labor contractors, but increasingly by corporate entities. A number of specific examples of these recruitment abuses are detailed in our written testimony (see attached Exhibit A); from them a general pattern can be abstracted:

Farmworkers are routinely NOT told by recruiters what they will be getting into if they accept the job offer. This is done by both corporate and individual recruiters. If farmworkers ARE told, job conditions are commonly misrepresented to them. They are told they will make a lot of money, live in good housing, and have plenty of work. This too is done by corporations as well as by individuals.

When they arrive at the job site, often 1,000 miles or more away from home, they find that there is no work. Or that they will be paid less than promised, or not paid at all. Or that housing is filthy and dangerous. Or that they are transported in unsafe vehicles.

Farmworkers frequently find that they must buy food, cigarettes and other items from the crewleader or the corporation's cafeteria. Often the price of these items is hugely inflated. They are soon in debt, and the purchases are deducted from their

PAY, LEAVING THEM LITTLE OR NO MONEY. IF THEY TRY TO LEAVE THE JOB, IT IS NOT UNCOMMON FOR THE LABOR CONTRACTOR, OR "FOREMAN", TO BEAT THEM UP, OR THREATEN TO KILL THEM. AT BEST, THEY LEAVE THE JOB WITH NO EARNINGS WHATSOEVER, AND MUST MAKE THEIR OWN WAY HOME.

IV. DOL INEFFECTIVENESS IN ENFORCEMENT

ALL OF THIS IS INFLICTED ON POWERLESS PEOPLE WHO PERFORM SOME OF THE MOST DIFFICULT, BACK-BREAKING AND TEDIOUS LABOR IN THIS NATION.

THIS IS THE REASON THE FARM LABOR CONTRACTOR REGISTRATION ACT WAS ENACTED. THIS IS THE REASON THE DEPARTMENT OF LABOR WAS GIVEN THE RESPONSIBILITY AND THE DUTY OF ENFORCING THE ACT. AND THIS IS THE REASON THE DOL HAS BEEN GIVEN STEADILY INCREASING RESOURCES AND WEAPONS WITH WHICH TO ENFORCE THE ACT. IT IS THE MISSION, THE DUTY OF THE SECRETARY OF LABOR AND HIS COLLEAGUES TO PROTECT THESE POWERLESS AND PRODUCTIVE LABORERS. YET THEY HAVE NOT DONE SO. THE ABUSES CONTINUE. WHY? HOW?

WE DO NOT KNOW WHY. BUT WE HAVE AN IDEA AS TO HOW DOL HAS FAILED IN ITS DUTY:

1. REGISTRATION VS. SANCTIONS

DOL HAS OVEREMPHASIZED REGISTRATION AND NEGLECTED THOROUGH INVESTIGATION AND THE IMPOSITION OF REAL SANCTIONS ON SERIOUS VIOLATORS.

IF THERE IS ONE AREA WHERE WE AGREE WITH AGRIBUSINESS, AND THERE IS ONLY ONE AREA OF AGREEMENT ON THIS ISSUE, IT IS THAT DOL HAS TOO FREQUENTLY ATTEMPTED TO REGISTER PERSONS

IN THE GRAY AREA OF FLCRA COVERAGE. DOL'S STATISTICS YEAR AFTER YEAR SHOW GREAT LEAPS IN REGISTRATION NUMBERS, LITTLE PROGRESS IN CIVIL MONEY PENALTIES COLLECTED OR CRIMINAL PROSECUTIONS. THE DOL ENFORCEMENT STRATEGY SEEMS TO BE TO REGISTER ABSOLUTELY EVERYONE FIRST, THEN TO CONSIDER REVOKING LICENSES AND PROSECUTING CRIMINALLY.

2. No Followup

THE FLCRA SANCTIONS SYSTEM IS GEARED TO SERIOUS AND REPEAT VIOLATORS. THUS, TO IMPOSE HEAVY SANCTIONS WHICH WILL ACT AS A REAL DETERRENT TO ABUSE, DOL MUST DETERMINE THAT A FARM LABOR CONTRACTOR HAS WILLFULLY AND KNOWINGLY VIOLATED THE ACT OR THAT THIS IS A SUBSEQUENT VIOLATION. 7 U.S.C. SEC. 2048(A). OBVIOUSLY PREVIOUS VIOLATIONS ARE RELEVANT TO BOTH DETERMINATIONS.

AND, UNDER THE PRESENT CIVIL MONEY PENALTY (CMP) SCHEME, THE ALREADY SMALL CMP AMOUNTS ARE REDUCED 50% IF THE VIOLATION IS ". . . FOR OTHER THAN AGGRAVATED, WILLFUL OR RECURRING." (SEE ATTACHED EXHIBIT B). AGAIN, PRIOR VIOLATIONS ARE RELEVANT TO ASSESSMENT OF A 100% CMP.

ONE OF THE BEST WAYS TO ASCERTAIN WHETHER A FARM LABOR CONTRACTOR, CORPORATE OR INDIVIDUAL, REPEATEDLY VIOLATES THE ACT IS TO DO FOLLOWUP INVESTIGATIONS. IF SHE VIOLATES IN WISCONSIN, FOLLOW HER TO TEXAS TO SEE WHETHER SHE DOES IT AGAIN. YET DOL STATISTICS SHOW THAT OF 5,708 "COMPLIANCE ACTIONS" CONDUCTED BETWEEN 9/21/78 AND 9/20/79, ONLY 276 WERE FOLLOWUP INVESTIGATIONS. THIS IS 4.8%. (SEE ATTACHED EXHIBIT C).

3. Underutilization of Available Resources

For years the DOL has told us that it was doing the best it could, that it had to enforce too many statutes with too few people. Yet this last year the responsibility for enforcing the Age Discrimination in Employment Act (ADEA) and the Equal Pay Act (EPA) was transferred out of DOL, and DOL received funding for 58 workyears of FLCRA enforcement. This was an increase of 27 over the approximately 31 workyears available to DOL for FY 1978.

Nevertheless, according to DOL statistics, DOL used only 31.86 workyears in FLCRA enforcement between 9/21/78 and 9/20/79. (See attached Exhibit C) (This calculation is based on a workyear of 2080 hours, with DOL reporting an expenditure of 66267 compliance hours. 66267 ÷ 2080 = 31.86.) Thus it used no more resources than it did the prior year, although 27 more workyears were available to it. Why?

Those resources which ARE used are used inefficiently. For example, in one of the portions of the Field Operations Handbook which DOL had disclosed to us, the witnessing of statements by more than one clearance officer is encouraged. FOH Sec. 58e01(d). (See attached Exhibit D). This adds nothing and wastes resources. The same is true in Sec. 58e31, which governs the documenting of a grower/user's inability to produce payroll records. (See attached Exhibit E).

Another example of wasted resources, FOH Sec. 58A17(b) suggests that it may be appropriate for the compliance officer to take an unregistered farm labor contractor to the nearest

STATE EMPLOYMENT SERVICE OFFICE TO APPLY FOR REGISTRATION. IF THE FARM LABOR CONTRACTOR AGREES TO REGISTER, THE COMPLIANCE OFFICER IS TO RECONTACT HIM OR THE LOCAL ES OFFICE TO DETERMINE IF HE HAS APPLIED. (SEE ATTACHED EXHIBIT E). GIVEN THE LIMITED AMOUNT OF TRAVEL MONEY AND COMPLIANCE OFFICER TIME, THIS IS A GREAT WASTE OF RESOURCES. ONE WOULD THINK THE UNREGISTERED FARM LABOR CONTRACTOR COULD TAKE HIMSELF TO THE ES OFFICE, THEN BRING THE APPLICATION FORM TO THE COMPLIANCE OFFICER'S OFFICE TO PROVE HE HAS REGISTERED. THIS IS NOT ONLY AN EXAMPLE OF RESOURCE WASTE BUT OF DOL'S UNDUE EMPHASIS ON REGISTRATION AND THE LENGTHS TO WHICH IT WILL GO TO ASSIST A VIOLATING FARM LABOR CONTRACTOR TO REGISTER.

4. Lack of Resources

EVEN WERE DOL TO USE ITS AVAILABLE RESOURCES FULLY AND EFFICIENTLY, 58 WORKYEARS IS WOEFULLY INADEQUATE TO ENSURE FULL ENFORCEMENT OF THE ACT AND ELIMINATION OF CONTRACTOR ABUSE OF FARMWORKERS. DOL SHOULD BE BUDGETED FOR AT LEAST 100 WORKYEARS, AND SHOULD USE THEM FULLY.

V. Enforcement of FLCRA Corrects Abuse

WHERE DOL HAS ENFORCED THE ACT, OR WHERE FARMWORKERS HAVE SUED UNDER THE ACT, THE CONTRACTOR HAS FREQUENTLY REFORMED HIS RECRUITMENT PRACTICES OR CEASED RECRUITMENT.

FOR EXAMPLE, IN 1977 IN MINNESOTA ONE OF THE MOST FLAGRANT ABUSERS WAS THE AMERICAN CRYSTAL LABOR COMPANY, WHICH RECRUITED WORKERS FOR SUGARBEETS THROUGH THE AXELSON LABOR COMPANY.

American Crystal Sugar Company, the parent of American Crystal Labor Co., was owned cooperatively by sugar beet farmers, and processed the beets for those farmers. American Crystal Labor Co. referred workers to the farmers for work in the sugar-beets. Among the complaints by about 30 workers against American Crystal Labor Co. was that there was no work on arrival and that the work, housing and wages were not as promised at recruitment.

After receipt of the workers' complaints, DOL determined that American Crystal Labor was covered by FLCRA and that there had been violations of that Act. As a result, in 1978 American Crystal Labor ceased recruiting and the beet farmers began recruiting workers directly for themselves. This has meant fewer misrepresentations and broken promises to workers. DOL's enforcement ended a very severe problem of broken promises and false expectations, and demonstrates the positive impact FLCRA can have.

Private enforcement of FLCRA is also effective. At minimum, a farmworker who prevails in a FLCRA lawsuit is compensated for the abuse he has suffered, whether or not the farm labor contractor reforms his practices or ceases recruitment.

VI. The Remedy: DOL Should Enforce Against Repeat and Serious Violators, Use Its Resources to the Fullest and Fine-Tune Its Enforcement Mechanism.

A. Repeat and Serious Violators

First of all, DOL should refocus its resources away from registering all manner of persons and entities and toward

THE IMPOSITION OF SERIOUS SANCTIONS ON REPEAT AND SERIOUS VIOLATORS.

WE CANNOT STRESS ENOUGH THAT THESE REPEAT AND SERIOUS VIOLATORS ARE NOT LIMITED TO THE TRADITIONAL "CREW-LEADERS" BUT INCLUDE CORPORATIONS, ASSOCIATIONS AND THEIR FULLTIME OR REGULAR EMPLOYEES WHO RECRUIT ON MORE THAN AN INCIDENTAL BASIS.

B. Heavy Sanctions

SECOND, HEAVY SANCTIONS SHOULD BE IMPOSED. THE CIVIL MONEY SCHEDULE IS A JOKE -- A $100 FINE FOR FAILING TO DISCLOSE TO WORKERS, CUT TO $50 IF OTHER THAN AGGRAVATED, WILLFUL OR RECURRING. THE CMP AMOUNTS SHOULD BE GREATLY INCREASED. AND, THOSE THAT ARE ASSESSED SHOULD BE COLLECTED; FEW ARE. CRIMINAL PROSECUTIONS SHOULD BE MUCH MORE FREQUENTLY USED, AND JAIL TERMS VIGOROUSLY SOUGHT. THIS MEANS DOL WILL HAVE TO WORK ON THE DEPARTMENT OF JUSTICE, BUT THAT IS DOL'S JOB.

CERTIFICATES OF REGISTRATION SHOULD BE MUCH MORE READILY REVOKED, OR NOT ISSUED. THE NUMBER OF REVOCATIONS AND NONISSUANCES IN 1979 WAS PATHETIC -- 74.

C. Coordination

THIRDLY, COORDINATION BETWEEN STATES AND REGIONS SHOULD BE MUCH BETTER. THE NUMBER OF FOLLOWUP INVESTIGATIONS SHOULD BE GREATLY INCREASED. PROBABLY THE DOL NATIONAL OFFICE SHOULD NOT BE USED AS A CENTRAL CLEARINGHOUSE. DIRECT COMMUNICATION BETWEEN AREA OFFICE AND AREA OFFICE SHOULD GREATLY INCREASE.

D. Thorough Investigation

Fourth, investigations should be much more thorough. Workers should be talked to, not just the farm labor contractor and the user. Consideration should be given to peonage and other human rights violations as an indication of a willful and knowing violation of FLCRA which will trigger a fine and prison terms.

An example of this lack of thoroughness: DOL compliance officers investigated a FLCRA complaint in Florida in 1977 which alleged that 20 people, including children, were living in a wooden shack, two tents, an open-air shed and assorted trucks on the premises of a corporate packing house. They had run out of drinking water, had only two portable toilets and no handwashing facilities. The Wage and Hour and OSHA compliance officers did not visit the shed but stood in a field west of the shed. Between them and the farmworkers at the shed was a stand of trees. The DOL people reported that, even with their field glasses, they could not see anyone in the packing shed.

This is the kind of "investigation" that must improve. It is the kind of investigation that results in DOL's finding that, out of 5708 compliance actions:

A. There has been misrepresentation to workers in only 25;

B. There has been nondisclosure to workers in only 887;

C. THERE HAS BEEN A FAILURE TO KEEP RECORDS, OR INACCURATE AND INCOMPLETE RECORDKEEPING, IN ONLY 243;

D. THERE HAVE BEEN IMPROPER MONEY PAYMENTS TO WORKERS IN ONLY 32;

E. THERE HAVE BEEN HOUSING SAFETY AND HEALTH VIOLATIONS IN ONLY 158;

F. AGREEMENTS WITH WORKERS HAVE BEEN BROKEN IN ONLY 24; AND

G. USERS HAVE FAILED TO KEEP PAYROLL RECORDS, OR HAVE MAINTAINED INACCURATE AND INCOMPLETE RECORDS, IN ONLY 61.

(SEE ATTACHED EXHIBIT G)

IN OUR EXPERIENCE, ALL OF THESE VIOLATIONS OCCUR MUCH MORE FREQUENTLY THAN THIS; THEY ARE ROUTINE.

E. FLCRA SPECIALISTS AND TASK FORCES

FIFTH, DOL SHOULD TRAIN FLCRA SPECIALISTS, AND PAY THEM MORE BECAUSE OF THE DIFFICULT NATURE OF FLCRA WORK. THE PORTIONS OF THE FIELD OPERATIONS HANDBOOK WHICH WE HAVE SEEN ARE COMPLETELY SILENT AS TO HOW TO CONDUCT A FARMWORKER INVESTIGATION, AS OPPOSED TO AN URBAN WORKER INVESTIGATION.

BILINGUAL INVESTIGATORS SHOULD BE HIRED.

TASK FORCES SHOULD BE ASSEMBLED IN EVERY AREA WITH A SUBSTANTIAL FARMWORKER POPULATION, AND THEY SHOULD OPERATE INTENSIVELY DURING THE GROWING AND HARVEST SEASONS. DOL SHOULD FORM A NATIONAL FLCRA TASK FORCE TO COORDINATE THIS ACTIVITY.

F. Speed in Investigation

Sixth, DOL FLCRA investigations are notoriously slow. Even if the compliance officer comes out right away, often the investigation is not concluded for six months or a year. By this time another recruiting season has passed, sanctions have not been applied, and more abuse has occurred. The farm labor contractor gets a free ride for yet another year.

There are many other recommendations which we have repeatedly made to DOL, and have been assured that they would be considered. Yet it appears to us that few have been adopted.

We have seen some signs of improvement. In some areas, such as Pennsylvania and Florida, enforcement has increased. The Assistant Secretary for Employment Standards has personally met with several migrant legal services attorneys to discuss better enforcement. One Assistant Regional Administrator, in Chicago, met with us on FLCRA enforcement. This is encouraging, but it does not replace a serious sanctions program or thorough investigations. And, it belies the drastic underutilization of resources by DOL this past year.

On the whole, we believe that adequate enforcement is possible to achieve with only a few additional resources and a change in emphasis by DOL; with it will come a marked improvement in the living and working conditions of migrant farmworkers.

VII. The Attempted Evisceration of FLCRA

The supreme irony is that although FLCRA enforcement has fallen far short of the mark since 1974, there is now a

MOVEMENT AFOOT TO SEVERELY RESTRICT THE JURISDICTION OF THE ACT, TO TURN THE CLOCK BACK TO 1963.

WE ARE AWARE, AND WE ARE CERTAIN THAT THE MEMBERS OF THIS SUBCOMMITTEE ARE AWARE, OF A VERY STRONG ATTEMPT BY THE AGRIBUSINESS LOBBY TO CUT THE HEART OUT OF FLCRA, TO EVISCERATE IT. MAJOR AGRIBUSINESS CORPORATIONS ARE RIGHT NOW ENGAGED IN FEVERISH EFFORTS TO EXEMPT CORPORATIONS WHO RECRUIT FOR THEIR "OWN OPERATIONS" AND THEIR FULLTIME OR REGULAR EMPLOYEES FROM ANY LIABILITY UNDER THE ACT, FROM ANY EFFECTIVE RECRUITING RESPONSIBILITY TO FARMWORKERS.

THIS HUE AND CRY BY AGRIBUSINESS ABOUT GOVERNMENTAL OVERREGULATION IS AN EXAGGERATED RESPONSE, ESPECIALLY WHEN ONE CONSIDERS THAT DOL HAS A PALTRY 58 WORKYEARS OF COMPLIANCE TIME FOR FLCRA ENFORCEMENT, AND THAT DOL HAS USED ONLY 31.9 OF THOSE WORKYEARS. THE FACT IS THAT AGRIBUSINESS SIMPLY DOES NOT WANT TO BE REGULATED IN ANY RESPECT.

THE RESULT OF THE DELETION OF "PERSONALLY" FROM SEC. 2042(B)(2) AND "ON NO MORE THAN AN INCIDENTAL BASIS" FROM SEC. 2042(B)(3) WOULD BE TO PROVIDE A WIDE ESCAPE HATCH FOR CORPORATIONS WHO DO SUCH THINGS AS MAKE FALSE PROMISES TO THE WORKERS THEY RECRUIT AND PROVIDE THEM WITH WOEFULLY SUBSTANDARD HOUSING. THE RESULT WOULD ALSO BE TO HAVE SUCH NOBLE INDIVIDUAL FARM LABOR CONTRACTORS AS MARCOS PORTALATIN CLASSIFIED AS "REGULAR" EMPLOYEES BY THEIR EMPLOYER CORPORATIONS; THEY COULD THUS CLAIM AN EXEMPTION. AS SHOWN IN THE ATTACHED MATERIAL, PORTALATIN'S CORPORATE EMPLOYER HAS ALREADY CLAIMED HIM AS A "REGULAR" EMPLOYEE. SUCH CHANGES IN NOMENCLATURE AND

METHODS OF OPERATION IN ORDER TO CLAIM AN EXEMPTION FROM A REGULATORY STATUTE ARE COMMON IN THE MODERN WORLD OF AGRICULTURE.

NOR DOES THE EXISTENCE OF STATE LAWS MAKE FLCRA COVERAGE OF CORPORATIONS AND THEIR EMPLOYEES UNNECESSARY. STATE COURTS ARE FREQUENTLY HOSTILE ENVIRONS, ESPECIALLY IN AGRICULTURAL AREAS WHERE FARMWORKERS WOULD HAVE TO FILE SUITS UNDER STATE STATUTES. (SEE ATTACHED EXHIBIT H.) IN ADDITION, STATE FRAUD AND CONTRACT CLAIMS BASED ON ORAL NEGOTIATIONS WILL BE ALMOST IMPOSSIBLE TO PROVE, ESPECIALLY WHEN THE CREDIBILITY OF AN OUT-OF-STATE SPANISH-SPEAKING MIGRANT IS MATCHED AGAINST A SMOOTH-TALKING, RESPECTED BUSINESSMAN PERSONNEL MANAGER.

THE AGRIBUSINESS LOBBY HAS KEPT ITS EFFORTS QUIET; IT DOES NOT WANT A FULL AND FAIR DISCUSSION OF THESE ISSUES. IT INTENDS TO PRESSURE THE CONGRESS TO ATTACH A "MIDNIGHT RIDER" -- A NONGERMANE RIDER TO AN AGRICULTURAL BILL AT THE CLOSE OF THE SESSION. THE BILL WOULD COME PROBABLY FROM THE SENATE AGRICULTURAL COMMITTEE AND GO TO CONFERENCE WITH THE HOUSE AGRICULTURAL COMMITTEE, BOTH COMMITTEES BEING MORE SYMPATHETIC TO THE INTERESTS OF AGRIBUSINESS THAN TO AGRICULTURAL LABORERS. THIS A DEVIOUS STRATEGY.

AGRIBUSINESS IS AFRAID TO HAVE ITS AMENDMENTS SEE THE LIGHT OF DAY; IT DOES NOT WANT ITS IDEAS EXPOSED TO FULL AND FAIR DEBATE. THIS IS BECAUSE THE CORPORATIONS AND THEIR LABOR CONTRACTORS HAVE SOMETHING TO HIDE -- THEIR EXPLOITIVE RECRUITMENT PRACTICES AND THEIR INTENT TO CONTINUE THEM.

ATTACHED TO OUR WRITTEN TESTIMONY AS EXHIBIT A IS BUT A PARTIAL LIST OF DOCUMENTED RECRUITMENT ABUSES. I URGE THE SUBCOMMITTEE TO REVIEW THESE INCIDENTS IN THE COURSE OF ITS DELIBERATIONS ON FLCRA ENFORCEMENT BY DOL.

I WOULD NOW LIKE TO YIELD TO ATTORNEY GEORGE CARR. THANK YOU FOR YOUR KIND ATTENTION.

EXHIBIT A: RECRUITMENT PRACTICES AND DOL ENFORCEMENT ACTIONS BY STATE

New Jersey

- Marcos Portalatin:

This farm labor contractor assaulted a legal services attorney, Arthur Read, and slashed him across the face and stomach with a knife. He has now been charged with assault with intent to kill, atrocious assault and assault with a deadly weapon.

Prior to this, Portalatin induced 16-20 year old boys to come from Puerto Rico to New Jersey through false promises of good money, good housing, good food and good working conditions. Upon arrival, these boys were required to work 7 days a week, from 5 a.m. to 5 p.m., at a breakneck pace with few rest periods. When one of the boys in the first crew to arrive complained of feeling ill and being unable to work fast enough, he was severely beaten in front of the other workers.

The workers were subjected to constant threats about what would happen to them if they attempted to leave the labor camp or did not work hard enough. They were not permitted to leave the labor camp to purchase food or other necessities. They were required to purchase all these things through Portalatin at greatly inflated prices.

As a result, these youths received as little as a penny in pay for more than 80 hours' work per week.

When DOL first began a compliance action against Marcos Portalatin, in May 1979, the corporation which employed him maintained that he was a "regular" employer who should be exempt from registration under and compliance with the Farm Labor Contractor Registration Act.

North Carolina

- In 1979 a farm labor contractor who operates in Florida and North Carolina brought migrant workers from Florida to North Carolina. When he recruited these workers, he and his assistant told them that the North Carolina camps had central air conditioning and heat, which they did not. He also told the workers that they would earn $2.90 per hour; he did not disclose the piece rate which he would pay. His assistant told the workers that they would earn $5 per hour, and that they were guaranteed $200 per week. The workers were told that they would work 5½ to 6 days each week.

At recruitment, the contractor and his assistant gave the workers no written disclosure of the terms and conditions of

employment. Nor did they make any disclosure, written or oral, as to where in North Carolina the workers would be taken. The workers were also not informed when work would begin or what the contractor would charge for food and alcohol. They were not told that, because the workplace was located so far from town, they would have to buy food and alcohol from the farm labor contractor.

Upon arrival the workers found that there was little work available, that they had been brough up in advance of the start of the season and there was nothing to do. During the first week, they did not work in the fields at all. One worker worked around the camp area for 15 hours, but was not paid for that work.

During the Second week the migrants worked three days. During the third week they worked Tuesday and Wednesday only, and were not paid by the contractor for that week.

During this time of little work the migrants had to eat and they drank some whiskey and smoked cigarettes. This food, drink and tobacco had to be purchased from the farm labor contractor, as they had no alternative source. The contractor sold his commodities at greatly inflated prices. He also charged a rental fee for sheets and blankets. It is illegal in North Carolina to sell alcohol in this fashion.

Because the migrant were not working much, they were paid little, and had to go into debt to the contractor. Their purchases were deducted from their pay when they did earn something. As a result, although they had been guaranteed $200 per week, the most case any of the five plaintiffs now suing the contractor ever saw was $10.

During one of the infrequent times the workers were able to apply for and obtain food stamps the farm labor contractor confiscated the stamps and purchased food, charging the workers $30 per week for that food.

The workers never saw any pay records or an itemization of deductions.

When three of the workers attempted to leave the camps, the contractor tracked them down, put them in his truck, took them back to the camp and slapped them around. He told them that if they tried to leave while they owed him money they would be killed and buried in a field. The contractor also held a group meeting or workers, at which he stated that if anyone tried to leave while in debt to him, that person would be killed.

On May 2, 1979, attorney William Geimer of Legal Services of North Carolina took two of these workers to the DOL Wage and Hour Office in Raleigh, alleging violations of the Farm Labor Contractor Registration Act by the farm labor contractor.

These violations included failure to make written disclosure of wages and working conditions and transportation in uninsured vehicles. Mr. Geimer also provided DOL with a 1978 affidavit that the contractor had beaten a worker in the ribs with a metal bar after accusing the worker of not properly cropping tobacco. Minor civil money penalties had been assessed against the contractor in 1977.

To the best of Mr. Geimer's knowledge, DOL took no action against the farm labor contractor during the entire 1977 season. The contractor had been registered by the Department of Labor on January 1, 1979, with transportation authorized. DOL Public Registry shows that as of August, 1979, his license had not been revoked.

North Carolina/Pennsylvania

In 1978 a farm labor contractor from Belle Glade, Florida, recruited 30 workers in Miami, Florida to work in North Carolina, but he made no written disclosure to them as to what the wages and working conditions were to be.

The contractor transported these 30 workers from Miami to Faison, North Carolina in a U-Haul van with the door bolted. He stopped once each hour so that the workers could get air and relieve themselves.

When they arrived in North Carolina, the contractor failed to pay the workers the minimum wage for their labor. They were paid $30-40 per week for 30-40 hours of work. They were given no pay stubs and shown no records of hours of pay. And, the housing was substandard.

In North Carolina the workers kept asking when the farm labor contractor would take them back to Miami. Finally, he told them "tomorrow" and loaded them on a bus. He then headed north to Pennsylvania, to Millville. There he told the workers that they had to pick tomatoes before he would take them to Miami.

They were placed in a camp with approximately 30 other people. There were only 2 shower stalls for the 60 residents. The rooms were overcrowded. Each worker paid $5 per week for this housing.

The workers also paid $50 per week for the following cuisine:

Breakfast - Grits
Lunch - Hot dog
Dinner - Pig's ears and rice

Complaints were filed with DOL in 1978 by approximately 10 of these workers. In 1979 this farm labor contractor was twice

granted certificates of registration by DOL, one for 0 workers, one for 65 workers. The certificate issued February 12, 1979 did not authorize transportation and housing. The certificate issued on March 7 authorized transportation and housing. The contractor's license has still not been revoked.

. In 1979 two farm labor contractors recruited a migrant farmworker, Alan Whitehead, in Philadelphia, Pa. They told his he would have work and would earn $50 per day. They did not give him written disclosure of the wages and working conditions.

They then transported Whitehead, along with three other workers, to the Wilke-Barre-Scranton area, where the workers at first found no work available in tomatoes or cucumbers. When he finally did work, Whitehead was paid nothing for apporximately two weeks' work.

Whitehead quit, went to DOL and filed a complaint containing allegations of violations of FLCRA and FLSA by the farm labor contractors. DOL inspected and found minimum wage violations. DOL informed Whitehead that he was owed $150 but that it would not collect the money for him. DOL never investigated the FLCRA violations at all.

These farm labor contractors were issued certificates of registration by DOL in 1979, the last on July 5, 1979. The July certificate granted one of them the permission to house workers which had been denied him on January 24. These contractors still have their licenses; none have been revoked.

Texas

. In 1978 a corporate cotton gin in Lubbock, Texas recruited migrant workers from South Texas through a cotton ginners association. The workers travelled 500 miles to Lubbock relying on promises of 84 hours of work per week, safe and decent housing to be provided by the gin, and reimbursement for their transportation expenses. When they arrived, however, they did not receive any work at all initially. After several complaints, they received a guarantee of 36 hours per week which also was not honored by the gin. Moreover, contrary to the recruitment promise, they had to pay rent for their housing and their one room barrack was grossly substandard, lacking a working toilet among other violations of federal and state minimum habitability standards. The workers never received the promised travel expenses.

. In 1977 a group of migrant agricultural workers from South Texas were recruited to work for a large corporate cotton gin in Goodland, Texas. Through its contractor/employee,

the gin solicited the workers with promises of a paid minimum of 40 hours per week for several months, and housing to be provided by the gin. After travelling 800 miles to accept the promised employment, they were given approximately half the work they were promised, they were required to transfer to a gin in a location different from the location they were recruited for, and they were put in housing which lacked heat and cooking facilities. Neither the gin nor its employee/contractor were registered under the FLCRA.

- In the summer of 1979 a large multi-national vegetable packer in Hereford, Texas recruited South Texas migrant workers through one of their full time managers. Induced by the field manager's promises of 40 hours work per week for 5 weeks, and decent housing to be provided by the shed, the workers travelled 800 miles to Hereford. When they arrived, they found that the shed had over-recruited with the result that they got only one week's work for a total of approximately 30 hours. The housing in which they were placed was plagued by no toilet facilities, hazardous wiring (some barracks were without any electricity at all) and a broken sewer pipe that poured raw sewerage into an open pool on the ground adjacent to the barracks. Conditions were so hazardous that a city housing inspector untimately condemned the barracks and ordered the workers out, forcing them to find housing on their own. Since the workers not only received a fraction of the promised work but also substantially lower wages than promised, they eventually returned to their homes having suffered a net loss. Both the corporate packing shed and their field manager are registered farm labor contractors but neither is authorized to provide housing.

- In 1979 Texas Rural Legal Assistance complained to DOL about the recruiting practices of a large vegetable growing and packing corporation. DOL found that one of the corporation's "contractors", who worked for that corporation on a seasonal but regular basis, had failed to make written disclosure of wages and working conditions to the workers. He had also compiled incomplete and inaccurate records, and had failed to record the production of children.

A file obtained by Texas Rural Legal Aid through the Freedom of Information Act shows that a Wage and Hour compliance officer explained the FLCRA violations to the contractor, who said he understood them. On August 28, 1979, the file was closed, with a letter to the contractor notifying him that no further action was contemplated at this time; "however, further violations could result in the imposition of civil money penalties or other civil actions." This was the second such warning letter to that contractor. The first had been issued in July. The August 28 letter covered violations occurring subsequent to the July warning letter, yet no sanctions were imposed.

- In 1979 the DOL Area Director told an attorney for Texas Rural Legal Aid that this same corporation would be required to register because it had engaged in recruiting workers in early 1979.

  DOL in 1977 cited a "field man" employed by this corporation for FLCRA violations. Although this man recruited for the corporation on more than an incidental basis, DOL failed to cite the corporation.

  The DOL cited this corporation for minimum wage violations in 1977. Moreover, that same corporation has in late 1978 or early 1979 paid an $1800 assessment for overtime violations. In 1979, it paid approximately $300 in minimum wage violations regarding field workers. The corporation is thus a known violator of the Fair Labor Standards Act.

  DOL has not disclosed its FLCRA actions against the corporation to Texas Rural Legal Aid, who represents the complainants, on the ground that to do so would interfere with DOL's law enforcement proceedings.

- A "contractor" for that same corporation maintained incomplete records on the corporation's workers, records which contained no addresses and social security numbers for many crewmembers.

  The contractor also failed to make written disclosure to his workers at recruitment. And, he gave only one pay receipt to an entire family, rather than one to each worker in a family as required by FLCRA.

  When DOL first investigated this farm labor contractor the compliance officer found him exempt because he recruited within 25 miles and less than 13 weeks. When a third party later told the compliance officer that the contractor worked as a crewleader in Uvalde, Texas as well as the McAllen area, an addendum was added to the file noting his coverage.

  The compliance officer then cited the contractor for the incomplete records, but missed the nondisclosure and pay receipt violations. On July 14, 1979 the compliance officer wrote the contractor a warning letter informing him that the file would be closed and that no further action was contemplated.

Indiana

- Naas Foods, Inc. and Edmundo Sosa:

  In 1978 Naas Foods, Inc., a cannery, recruited Texas workers through Edmundo Sosa of Naples, Florida and Brownsville, Texas. Naas sent a letter to Sosa, which Naas claims was shown to the

workers. The workers were never given a complete written disclosure statement. The letter stated that Naas needed 165 women and 160 men to work in Portland and Geneva, Indiana.

According to the letter, workers were to receive a minimum $2.65 per hour, free housing, and the season was to begin between August 1 and 10, and continue to between October 1 and October 15. Job duration was subject to change due to weather conditions. Transportation was to be arranged by Naas from Texas to Indiana and the cost deducted from the workers' wages. These deductions would in turn be refunded if the employees stayed until the season was considered closed.

Naas and Sosa brought the workers to Indiana several weeks before steady work was available. Since the workers did not have their own transportation, they had to eat at the company's cafeteria on credit. When the migrants began working steadily, the cost of meals and transportation was deducted from their initial paychecks, which brought their pay below minimum wage.

DOL was notified and performed an FLSA compliance action which resulted in a finding that FLSA minimum wage had been violated due to excessive deductions. Other FLSA violations were also found, including nondisclosure of reasons for deductions.

As a result, some of the workers were refunded the transportation deduction, but DOL has not obtained liquidated damages for them. Nor has it taken any action on the FLCRA violations, as nearly as the Legal Services Organization of Indiana can discern. Such discernment is difficult because DOL refuses to share information about this case with the Legal Services Organization of Indiana.

Approximately 17 workers have sued Naas Foods, Inc. under FLCRA and FLSA in the case of Torreblanca v. Naas Foods, Inc. and Edmundo Sosa, Civ. No. F-78-0163 (N.D.Ind., Ft. Wayne Div.)(Filed December, 1978).

Subsequent to this episode, involving as it did nondisclosure, misrepresentation and breach of promise to the workers, and subsequent to the filing of the lawsuit, Edmundo Sosa was again registered by DOL on January 1, 1979.

Wage and Hour in Indiana:

It is the perception of the staff of the Legal Services Organization of Indiana, Inc., that Wage and Hour does not do much FLCRA enforcement in their area. LSO staff never encountered compliance officers out on their own in 1979. Attorney Thomas Ruge encountered one once -- at the immigration office in the Spring of 1979.

Attorney Ruge has called Wage and Hour people, and they have put him off. This is in spite of repeated efforts and invitations by Attorney Ruge to establish an effective working relationship.

Wage and Hour also take a long time to investigate a case, which does not work with farmworkers. Wage and Hour had told Ruge, "Yeah, we'll get to it." By the time they do, the season is over.

Illinois

· Canning Companies -- Current Practices

Illinois has several large canning corporations who recruit for themselves and, between crops, allow their migrant workforce to be used by other growers.

It is a practice of these companies to promise migrants work by a certain date for instance mid-April. The workers arrive in mid-April to find that work will not start until mid-May. The delay is ordinarily two weeks to a month.

The workers have, preparatory to their trip to the cannery, withdrawn their children from Texas schools and closed up their homes in Texas.

The lack of employment necessitates that the workers apply for public assistance, with its concomitant drain on the public treasury.

These canneries always promise that the housing is in satisfactory condition, and it seldom is. Among the common housing conditions are: Standing sewage; factory drainage running through workers' cabins; rats; freight trains running near the cabins; exposed electric wires causing electric shocks to residents; fires due to improperly connected gas lines; plugged toilets causing standing water in the toilet buildings.

In one instance, the Joan of Arc Company provided one water heater with a capacity of 20 persons for a camp of 100 people. After this was the subject of a citation ensuing from a federal inspection, the cannery installed 3 new water heaters.

Attorney Tom Hecht of the Illinois Migrant Legal Assistance Project states that his program is never called by Wage and Hour compliance officers and that he never encounters those compliance officers in the field.

Michigan

· The major problem with FLCRA enforcement in Michigan as of 1977 was that the farm labor contractor and the farmer would

tell the compliance officer that the contractor was a "foreman". The compliance officer accepted that version and did not consider the contractor covered by the Act.

New York

- In 1978, a grower's attorney drew up a contract and handed it out upon the workers' arrival at the camp, rather than at recruitment. When Western New York Rural Legal Services complained to DOL, the compliance officer stated that this was only a minor violation, that anything under a $100 civil money penalty was "not worth it".

Idaho

- As of 1978, while one local compliance officer was very cooperative and helpful to farmworkers, he was overworked and thus could not actively enforce FLCRA. This compliance officer had no secretary and had many other statutes to enforce.

  This was at a time when dozens of contractors were being used by growers and no contractor or grower was complying with FLCRA.

FLCRA; Del Civ Money Penalty Rpt

Control Number

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
WAGE AND HOUR DIVISION

FARM LABOR CIVIL MONEY PENALTY REPORT

Name

Registration Number

☐ Farm Labor Contractor

☐ Farm Labor Contractor Employee of _____

Permanent Address

Investigation Site

Compliance Officer(s)

Date

FLC/FLCE VIOLATIONS	PENALTY	ENTER AMOUNT IF APPLICABLE
1. Failure to register:		
a. Certificate 4(a)	$1000*	
b. ID Card 4(b)	500*	
2. Failure to exhibit certificate 6(a)	50	
3. Disclosure to workers 6(b)	100	
4. Posting at work site 6(c)	50	
5. Misrepresentation to workers 5(b)(2)	400	
6. Failure to keep required records 6(e)	400	
7. Record keeping incomplete or inaccurate 6(e)	200	
8. FLC records furnished to user 6(e)	100	
9. Statement of amounts contractor received provided to worker 6(e)	100	
10. Illegal alien workers (total may exceed $1000) 6(f)	400 ea	
11. Proper money payments 6(g)	200	
12. Worker purchases 6(h)	200	
13. Transporting without certificate authorization 5(a)(4)	400	
14. Operating vehicle used to transport workers 5(b)(8)	200	
15. Vehicle safety 5(b)(8) & 5(b)(12)	400	
16. Vehicle insurance 5(b)(5) & 5(a)(2)	1000	
17. Notification to Secretary of vehicle change 5(d)	50	
18. Housing workers without certificate authorization 5(a)(4)	400	
19. Housing safety and Health (up to $1000) 5(b)(12)	1000	
20. Posted housing conditions 6(d)	50	
21. Notification to Secretary of housing change 5(d)	50	
22. Knowingly made misrepresentations or false statements in application for a certificate or ID card 5(b)(1)	500	
23. Certificate holder is not the real party in interest and real party has had certificate or ID card revoked, denied or does not presently qualify 5(b)(11)	1000	
24. Failure to abide by agreement with workers 5(b)(4)	400	
25. Breach of agreement with user 5(b)(3)	400	
26. Discrimination against workers testifying or exercising rights 13(a)	1000	
27. Engaging unregistered FLC (total may exceed $1000) 4(c)	1000 ea.*	
28. Hiring unregistered FLCE (total may exceed $1000) 5(b)(10)	300 ea.*	
29. Knowingly employing in any Farm Labor Contractor activity a person who has taken any action that could disqualify the person from holding a certificate or ID card (total may exceed $1000) 5(b)(9)	1000 ea	
TOTAL ASSESSED PENALTY	XXXXXXX	$

If violation is for other than aggravated, willful or recurring, reduce penalty by 50%.
*If the FLC or FLCE has made application prior to beginning this investigation, subtract 50%.

(Continued on reverse)

Exhibit B

Form WH-418
(Rev. Jan. 1978)

Control Number

U.S. DEPARTMENT OF LABOR EMPLOYMENT STANDARDS ADMINISTRATION WAGE AND HOUR DIVISION	FARM LABOR CIVIL MONEY PENALTY REPORT
Name	Registration Number
Permanent Address	Investigation Site
Compliance Officer(s)	Date

GROWER, PROCESSOR OR OTHER USER VIOLATIONS	PENALTY	ENTER AMOUNT IF APPLICABLE
30. Engaging unregistered FLC (total may exceed $1000) 4(c)	$1000*	each
31. Failure to keep required payroll records (total may exceed $1000) 14	400	each
32. Failure to keep complete and accurate payroll records (total may exceed $1000) 14	200	each
33. Failure to obtain and maintain contractor records (total may exceed $1000) 14	400	each
34. Failure to obtain complete contractor records (total may exceed $1000) 14	200	each
35. Discrimination against workers testifying or exercising rights 13 (a)	1000	
TOTAL ASSESSED PENALTY	XXXXX	$

If violation is for other than aggravated, willful or recurring, reduce penalty by 50%.
*If the FLC or FLCE has made application prior to beginning this investigation, subtract 50%.

Exhibit B

SUPPLIED BY:
BRANCH OF WAGE HOUR STATISTICS
DWICS-DAN-ESA

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION

TABLE 1: REGIONAL SUMMARY OF FLSRA COMPLIANCE ACTIONS
PERIOD OF 09-21-78 TO 09-20-79

DATE REPORT RUN: 10-30-79

DETAILS OF COMPLIANCE ACTIONS	ALL REGIONS	BOSTON	NEW YORK	PHILA	ATLANTA	CHICAGO	DALLAS	KANSAS CITY	DENVER	SAN FRAN	SEATTLE
TOTAL COMPLIANCE ACTIONS	5708	93	360	521	1130	949	1323	265	162	718	187
COVERED BY ACT	4608	87	249	483	1066	710	1118	68	85	636	107
TOTAL COMPLIANCE ACTIONS	5708	93	360	521	1130	949	1323	265	162	718	187
F.L. CONTRACTORS	2899	66	148	205	591	359	859	189	50	350	71
CONTRACTOR EMPLOYEES	859	2	45	109	254	96	221	6	28	120	9
USERS	1920	26	168	208	285	484	243	70	84	248	107
CONCURRENT FLSA ACTION	2502	6	217	273	431	655	546	43	77	187	67
ACTIONS FULLY IN COMPLIANCE	2689	6	211	189	374	716	624	212	97	143	117
ACTIONS WITH NON-COMPLIANCE	3019	87	149	332	756	233	699	53	65	575	70
TYPE OF ASSIGNMENT											
STATE EMP SVC COMPLAINTS	163		26	11	78	29	7		3	3	6
OTHER COMPLAINTS	445		10	77	69	34	87	6	13	110	36
NON-COMPLAINTS	2596		168	278	521	550	524	122	99	224	60
EUW	2504	93	147	155	462	296	695	137	47	381	91
TYPE OF COMPLIANCE ACTION											
CONCILIATION	30										
FULL INVESTIGATION	4952	93	249	1	10	1	6		1	6	5
FOLLOW UP INVESTIGATION	276		25	492	1045	872	1169	264	151	475	143
OTHER	450		86	5	25	51	109	1	3	34	27
				23	50	25	44		7	203	12
COMPLIANCE HOURS EXPENDED	86267	861	2852	6530	20873	8482	12689	1706	2183	7615	2276
TOTAL CREW WORKERS	145070	9516	4531	6801	23102	50508	23629	2331	2949	20332	2701
TOTAL UNAUTHORIZED ALIENS	2243		19	140	512	46	693	1	90	494	112

(d) A determination of the number of individuals in the crew should be made. Signed interview statements witnessed by more than one CO, if possible, should be taken from the workers ascertaining whom they believe to be the Farm Labor Contractor. Interview statements should include individual's permanent address and other identifying information which would expedite locating potential witnesses.

(e) In the event a FLC is unable to produce a current certificate of registration, document the claims of the FLC regarding registration.

[redacted]

(f) If the investigation is conducted by two COs, both should be present and witness any statements made by the FLC, FLCE, and/or user under investigation. It is desirable but not absolutely necessary that both COs be present and witness statements made by members of the crew. The CO should document that the certificate was asked for and that another CO on the team observed the request for the certificate. If the contractor states that "he left the certificate back at the camp," it should be verified.

(g) Full-time or regular employee. In addition to information required for FLC, document the employment relationship between the FLC and the individual under investigation. Document the individual as a "full-time or regular" employee of the FLC. (See 29 CFR 40.2(m) and Section 4(b) of the Act.) A FLCE who does not possess an I.D. card should be charged for failure to obtain the I.D. card prior to engaging in Farm Labor Contractor activities. Documentation of information concerning FLCE also requires obtaining all information set forth in 58E01(a).

(h) Any person having a FLCE certificate is required to comply with all provisions of the Act and regulations as if he were a covered FLC as provided in 29 CFR 40.52.

[redacted]

58e29 KNOWINGLY EMPLOYING IN ANY FLC ACTIVITY A PERSON WHO HAS TAKEN ANY ACTION THAT COULD DISQUALIFY THE PERSON FROM HOLDING A CERTIFICATE OR ID CARD. (Sec. 5(b)(9); 29 CFR 40.51(o), 29 CFR 40.63(j))

If a FLC knowingly employs any person as an FLCE who could be disqualified from holding a certificate under Section 5(b) of the Act, a violation would occur. The disqualifying basis must be documented (i.e., a FLCE whom the contractor knew had been convicted of murder in the last year along with substantiation of the FLC's "knowing" employment.

58e30 - ENGAGING UNREGISTERED FLC (Sec. 4(c); 29 CFR 40.53(c)

Refer to 58e01 for documentation on an unregistered FLC. When a FLC is found to be unregistered or operating while his/her certificate is not in full force and effect (as described in 58e01), an investigation of the user should commence. In addition to the evidentiary requirements set forth in 58e01, interview statements should be taken from the FLC and user to document the contractual arrangement.

58e31 - FAILURE TO KEEP REQUIRED PAYROLL RECORDS (Sec. 14; 29 CFR 40.53(a))

(a) If the grower/user is determined to be the one paying the workers, he must maintain records required under Federal law (i.e., FLSA, IRS, SS).

(b) CO(s) should request records from the grower/user for review. Should the grower be unable to produce any records, CO(s) (preferably 2) should document this information in the file. Statements should be obtained from the grower and FLC, if possible.

58e32 - FAILURE TO KEEP COMPLETE AND ACCURATE PAYROLL RECORDS (Sec. 14; 29 CFR 40.53(a))

If the grower/user is determined to be the one paying the workers, he must maintain complete and accurate payroll records. When CO(s) find R/K violations during the investigation, transcriptions should be made to illustrate the type of violation and to provide a method for computing back wages should they be found due.

58e33 - FAILURE TO OBTAIN AND MAINTAIN CONTRACTOR RECORDS (Sec. 14; 29 CFR 40.53(b))

(a) If the/is been determined to be the person paying the workers, he/she must provide the user (and the user has the responsibility to obtain and maintain) copies of all records required to be kept and information required to be provided by the contractor under Section 6(c) of the Act and 29 CFR 40.51(k) and (j). This includes not only R/K information but all data concerning amounts received on behalf of

Exhibit E

58A16 Case analysis prior to disposition.

When the factfinding phase of the case is completed the CO must analyze the situation in light of the following (see FOH 58A06):

(1) What noncompliance has been found and who is responsible? What are the reasons for the noncompliance? Is this a first investigation?

(2) What is the most efficient and quickest way to achieve compliance? It is WH policy that compliance be achieved immediately. Can compliance be achieved administratively or is litigation or other formal enforcement remedies (see FOH 58A10) indicated? Is it necessary for the CO to make a followup investigation or should a followup be made by another CO at the contractor's next location? If litigation is necessary, which remedy is the best to use under the circumstances and why?

The CO must make a judgement in light of the answers to the above as to the best way to proceed. Necessarily some of the above information may be obtained at the final conference.

58A17 Final conference and disposition.

a Upon completion of the factfinding phase of an investigation under FLCRA a conference will be held with the person investigated. As appropriate the FLC/FLCE or farmer/grower may be present at the same conference. In any case the conference will be conducted with someone who can speak with authority and make any necessary changes:

(1) The CO shall point out to the FLC/FLCE and/or farmer/grower the results of the investigation, where noncompliance was found, and how compliance can be achieved.

(2) The CO shall ascertain the reasons for any violations and obtain an agreement to comply. The CO shall point out to the FLC/FLCE or farmer/grower the seriousness of the violations and the possible consequences of operating in violation and the WH policy that compliance should be achieved immediately.

(3) The CO must exercise a practical judgement as to the best way of achieving immediate compliance.

b If the FLC/FLCE has failed to register the CO will take whatever steps are necessary to see that registration is achieved immediately. In some cases it may be appropriate to take the contractor to the nearest State Employment Service office to apply for registration.

Exhibit F

SUPPLIED BY:
BRANCH OF WAGE HOUR STATISTICS
DMICS-OAM-ESA

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION

TABLE 1: REGIONAL SUMMARY OF FLCRA COMPLIANCE ACTIONS
PERIOD OF 09-21-78 TO 09-20-79

DATE REPORT RUN: 10-30-79

DETAILS OF COMPLIANCE ACTIONS	ALL REGIONS	BOSTON	NEW YORK	PHILA	ATLANTA	CHICAGO	DALLAS	KANSAS CITY	DENVER	SAN FRAN	SEATTLE
FLC/FLCE VIOLATIONS	2313	67	129	233	602	176	606	31	50	388	29
1A NO CERTIFICATE 4(A)	712	56	12	58	174	42	127	21	23	186	13
1B NO ID CARD 4(B)	482	2	29	43	172	23	90	3	21	95	4
2 FAIL TO EXH CERTIF 6(A)	987	56	28	72	315	68	178	23	31	200	16
3 DISCLOSE TO WKRS 6(B)	887	56	44	100	255	100	177	24	6	106	19
4 POST AT SITE 6(C)	936	62	42	66	233	98	278	24	12	116	25
5 MISREP TO WKRS 5(B)(2)	25		5		4	4	5	1	1	2	3
6 FAIL TO KEEP RECS 6(E)	110		6	10	40	7	22	14	2	6	3
7 INACC/INCOMP RECS 6(E)	133		2	24	42	11	32	1		20	1
8 RECS FURN TO USER 6(E)	308	2	14	33	69	12	62	11	2	86	17
9 STMT OF $ TO WKR 6(E)	827	62	51	116	264	34	183	13	3	86	15
10 ILLEGAL ALIEN WKRS 6(F)	215		4	20	62	6	72		10	36	5
11 PROPER $ PAYMENTS 6(G)	32		3	4	11	1	2	1		8	2
12 WORKER PURCHASES 6(H)	10		1	2	3		2		1	1	
13 UNAUTH TRANSP 5(A)(4)	561	54	29	62	179	24	143	10	11	42	7
14 OPER VHCL USED 5(B)(6)	695	58	30	76	276	21	153	7	9	52	5
15 VHCL SAFETY 5(B)(8/12)	307	18	5	31	95	8	120	6	9	12	3
16 VHCL INSUR 5A(2)/B(5)	396		19	41	149	15	130	6	10	20	4
17 NOT TO SEC VHCL 5(D)	89		2	15	54	7	5		3	3	
18 UNAUTH HOUSING 5(A)(4)	224	5	24	47	78	16	16	5	12	17	4
19 HOUS SFTY/HLTH 5(B)(12)	158		4	45	77	3	13	4	4	5	3
20 POST HOUS CONDS 6(D)	187	1	10	36	87	10	13	3	7	17	3
21 NOT TO SEC HOUS 5(D)	67		2	5	40	2	2		4	12	
22 FLSE STMTS APPL 5(B)(1)	36	1	1	1	24		2		3	3	1
23 BOGUS CERT HDR 5(B)(11)	9		1		6	2					
24 BREAK WKR AGREE 5(B)(4)	24		3		8	3	1			7	2
25 BREAK USR AGREE 5(B)(3)	19		4		6	1	2			5	1
26 DISCR TESTIFIERS 13(A)	5		2		2						1
27 HIRE UNREG FLC 4(C)	57	1	4	8	25	3	15			1	
28 HIRE UNRG FLCE 5(B)(10)	348	3	24	39	126	10	69	3	8	64	2
29 HIRE DISQL FLC 5(B)(9)	6		1		2	2				1	
USER VIOLATIONS	706	20	20	99	154	57	91	22	15	187	41
30 HIRE UNREG FLC 4(C)	546	19	14	79	142	49	65	19	15	105	33
31 FAIL KEEP PAYROLL RECS	52			2	5	3	4	6		32	
32 INACC/INCOMP PAY RECS	9			4	1		4				
33 FAIL OBTAIN CONTR RECS	190		9	34	43	11	26	11	2	46	8
34 INCOMPLETE CONTR RECS	116	1		2	16	1	13			28	5
35 DISCR TESTIFIERS 13(A)	5				2		1	1		1	

Senator NELSON. What about the complaints that I have heard here today, and I have heard them before, that the law is good but the enforcement of the law by the State isn't very good?

Mr. REYFF. I am going to ask our senior special investigator from the Fresno office who deals in law enforcement and who is the man actually out doing it.

STATEMENT OF SEWARD YOUNG, SENIOR SPECIAL INVESTIGATOR, FRESNO OFFICE OF STATE LABOR LAW ENFORCEMENT

Mr. YOUNG. Thank you. I am Seward Young, senior special investigator for the Fresno Office of State Labor Law Enforcement.

In the area that I police, which is a six-county area, I am the sole State officer handling the policing of farm labor contractors.

Senator NELSON. How many are there in this area?

Mr. YOUNG. Approximately 320.

Senator NELSON. You are the sole State official supervising the about 300 contractors in the area?

Mr. YOUNG. That is correct.

Senator NELSON. Proceed.

Mr. YOUNG. Of course these aren't my only duties. I also police the fields insofar as health and sanitation, child labor, workmen's compensation, and other laws that the State division of labor law enforces.

Last year I made 489 inspections of various fields. This wouldn't only entail contractors, but it would also be farms where there is no contractor involved.

Senator NELSON. You made 489 inspections of areas where workers were employed, in other words.

Mr. YOUNG. That is correct. I don't have any record of the number of warnings that I issued, but I did make 27 arrests for various violations that I found in the fields during that period of time. Most of my arrests are made by the citation process, in other words, the same as a traffic officer who gives you a ticket when he finds your speeding. The only problem I do have insofar as the enforcement of the law is concerned is that I don't get too good of a response from the courts in the final prosecution of the case. My fines are very small. In one instance I found 200 children in a field——

Senator NELSON. Two hundred underage?

Mr. YOUNG. Yes.

Senator NELSON. In violation of the law, in one field?

Mr. YOUNG. In one field. One citation was issued because it covered the entire field. There were two separate instances of this type.

Senator NELSON. The same employer?

Mr. YOUNG. No. One was a contractor and one was a farmer. In one case the case was dismissed because the judge didn't feel that child labor in the fields was a bad thing, and in the other case I obtained a $35 fine.

That's one of the problems we have in the enforcement of the laws. My feeling is almost that it is better not to make an arrest but rather to give a warning due to the fact we don't get too good of cooperation from the courts, especially in these farm areas.

Senator NELSON. These are all State courts?

Mr. YOUNG. Yes, these are all State courts. They are actually county courts, municipal courts, justice courts, courts of this type.

Senator NELSON. What you need are some law and order judges, I think.

Mr. YOUNG. Possibly so, sir.

Senator NELSON. Who follow the law.

Mr. YOUNG. But when you are faced with a situation in an agricultural county, I don't know, the judges just don't seem too much interested in the enforcement of this type of law.

Senator NELSON. Well, 200 underage in one field would seem a little gross. If it were two, it might be another matter.

Mr. YOUNG. Mr. Nelson, during the harvest season there are far more than that working, let me assure you.

Senator NELSON. For one grower?

Mr. YOUNG. No, not for one grower, not one particular grower. In this area during the harvest season I have about 115,000 farmworkers that I police.

Senator NELSON. That isn't physically possible.

Mr. YOUNG. It isn't physically possible to get around to all of these spots, no.

Senator NELSON. If you did 480 is 1 year, if you even counted Sundays, you would be doing substantially better than one a day, one and a third inspections a day counting Saturdays and Sundays.

Mr. YOUNG. I keep busy.

Senator NELSON. You must violate the speed limit getting around.

Mr. YOUNG. The area that I cover is composed of some 17,000 square miles. I think a reporter one time compared my area, when it was a little bit larger, to the area actually about the size of New York, the State of New York, that is.

Senator NELSON. It sounds to me——

Mr. YOUNG. It is a manpower problem with us at the moment. Hopefully it will be rectified.

Senator NELSON. From the duties you have, it sounds more likely that they will double your duties more likely than double the staff.

Mr. REYFF. Senator, he is retiring.

If I may, I would like to make one or two observations about the complaints. You heard testimony from two workers who had difficulty collecting their wages. One of the workers did receive his pay. The other said he didn't receive his pay by taking action through our office because, as I determined it, lack of evidence. But we do accept wage claims from workers against farm labor contractors and we proceed very quickly against the contractors. The $5,000 bond that is required by California law is a wage protection bond that was placed because historically there were occurrences of contractors skipping with payrolls.

If a contractor leaves the area or does not pay a worker and the worker has a valid claim, we can proceed against that bond and collect his wages.

[The biographical sketch of Mr. Young follows:]

BIOGRAPHICAL SKETCH

Seward Young, Senior Special Investigator with the Fresno Office, State Division of Labor Law Enforcement since 1954.

Prior to this, his law enforcement career commenced in 1940 as a U. S. Border Patrol Inspector. Subsequently he was an Immigration Inspector; Immigration Investigator; Senior Deputy Sheriff, Fresno County Sheriff's Office; Special

Exhibit H

TESTIMONY

OF

GEORGE E. CARR

LEGAL AID BUREAU OF MARYLAND
SUBCOMITTEE ON MANPOWER AND HOUSING
UNITED STATES HOUSE OF REPRESENTATIVES

NOVEMBER 13, 1979

I. Introduction

My name is George Carr. I am the Chief Attorney of the Salisbury office of the Legal Aid Bureau of Maryland. The Salisbury office is responsible for the delivery of legal services to migrant workers in Maryland in Delaware. I would like to join with Mr. Ebbott and Mr. Read in thanking this subcommittee for this opportunity to make a few remarks.

I have been working with migrant workers for the past four years. I began working in the Immokalee office of Florida Rural Legal Services in June, 1975. From there, I moved to Wauchula, Florida where I worked for another two years. Last January, I moved to Salisbury, Maryland.

II. DOL Ineffectiveness in Enforcing FLCRA

Mr. Chairman, I sincerely hope that the representatives of agribusiness and the Department of Labor which the subcommittee will hear today will not complain of undue regulatory pressure being placed upon small, family growers. This analysis must fail for two reasons. For one thing, we are now in the age of agribusiness. Complex and sophisticated business practices involving tremendous accumulations of wealth are becoming the norm in American agriculture. For example, in Florida, there are many groves owned by absentee

which are maintained by citrus maintenance corporations, are harvested by citrus harvesting companies (which may, in turn, subcontract their harvesting work to smaller citrus harvesting companies), and are subject to fruit agreements requiring delivery of harvested fruit to citrus processing plants owned by combinations of other corporations. In Florida's vegetable industry, a major international corporation, A. Duda and Sons, Inc., dominates a substantial portion of all of Florida's produce markets. With land holdings capable of staggering the imagination in different continents, its position of prominence in these produce markets is readily understood.

The growers are also wrong if they intend to convey the impression that DOL has been active in FLCRA enforcement. As Mr. Ebbott indicated, the Department represented in March and April of this year that it would devote 58 man-years of its compliance officers' time to FLCRA enforcement. In fact, the Department only utilized 31.9 man-years of enforcement time. The results achieved during these 31.9 man-years have been less than impressive. Nation-wide, the Department encountered only twenty-five cases where farm labor contractors misrepresented the terms and conditions of prospective employment at the time of recruitment and only twenty-four instances of farm labor contractors failing to abide by the terms and conditions of their employment agreements with their workers. I would be glad to take this committee on a tour of the labor camps on the Delmarva Peninsula during the next growing season. I believe that we could locate more than twenty-five cases of misrepresentation and more than twenty-four cases of breach of employment contracts in several days' time. Interestingly, the Department's data show that the Baltimore

Area Wage and Hour Administration Office,which is charged with the responsibility for enforcing FLCRA in Maryland's Eastern Shore, did not encounter a single instance of contractor misrepresentation to farmworkers. Members of the committee, I hope that you will remember that I reported problems in connection with the operation of Marcos Portalatin's labor camp near Wyoming, Delaware to the Baltimore area office in June of this year when Mr. Read relates his story about Mr. Portalatin's crew. It is incredible to believe that any bona fide investigation could have been made at Mr. Portalatin's labor camp without uncovering substantial, life threatening misrepresentation to workers.

The Department also states that it found only 158 instances of farm labor housing failing to comply with applicable Federal and State Health and Safety Standards in 706 investigations. In other words, the Department contends that it found housing violations in less than 23% of the labor camps visited by compliance officers. The Baltimore area office represents that it found only seventeen housing violations in forty-one investigations. Again, I would like to invite the committee to the Delmarva Peninsula. I am certain that we would be able to locate more than seventeen violations.

To give the committee a sense of the meaning behind these statistics, I have brought along photographs of the largest labor camp in our service area. This is the Westover labor camp located in Somerset County, Maryland. The camp appears to be operated by the Somerset Growers, Inc. As you members of the committee review these photographs, I hope that you will be able to imagine what it must be like to live in these facilities. Can you imagine what it must be like to live in the Westover camp and have to work in the fields for long hours? Can you comprehend how you would

react if members of your family contracted dysentery or impetigo because of the patently unsafe and unhealthy living conditions surrounding you? How would you view agents of the United States Department of Labor who observed your living conditions and did not ask whether you were tricked into coming to Westover? Could you tolerate the insulting inference that you moved into the camp knowing what it would be like?

Members of the committee, at the request of the Legal Aid Bureau, an individual with expertise in the area of institutional residential facilities toured the labor camp at Westover. When he was through, he stated that it was one of the worst living situations that he had seen. In fact, he believed that it was worse than any prison he had seen. This seemed like an extraordinary claim at the time it was made because he had testified as an expert in a large number of cases dealing with jail conditions. However, in retrospect the claim seems less extraordinary. After all, at one time the camp served this country as a prison. Originally, many of the buildings now at Westover were used as a barracks for the Civilian Conservation Corps. In World War II, the buildings were used to house prisoners of war. Now, they house migrants.

From my own knowledge and contacts with members of the farmworker community, I know that the conditions in Westover have existed for at least three years. Very reliable persons advise me that Westover is now worse than it was five years ago. Lists of crew leaders believed to be operating in Westover during past years compiled by migrant service agencies suggest that a vast majority of the crew leaders working out of Westover were doing so without authorization to house migrant workers. A check with the public registry of farm labor contractors compiled bythe Department suggests that

the Westover crew leaders operated without housing authorization and were never subjected to any enforcement activity by the Department. One crew leader operating in Westover this year did not have any certificate of registration and managed to remain wholly undetected by the Department's compliance officers.

I hope that the committee will not blindly accept my rendition of the facts about the Department's FLCRA enforcement efforts in Westover. I hope the committee will encourage the Department to come forward with records of its enforcement efforts showing that it has cited the crew leaders and others responsible for the conditions there and has enforced the law in the manner intended by Congress.

Members of the committee, it is my belief that the Department can make no such showing. It is my hope that you can fully appreciate the tragic consequences of this inaction. Like any normal person, I hope to inspire my clients with a sense that they can, through their own individual efforts, overcome the conditions of poverty which trap them and the members of their families. There is little I can say, however, to a family at Westover other than that they are subjected to conditions which appear to be in gross violation of the law and that the Department of Labor has failed for many years to afford them the administrative remedy provided by Congress.

III. Absence of FLCRA Sanctions

Commentary on the substantial problems underlying the efforts of Wage and Hour compliance officers should not deflect the attention of this subcommittee from the problems legal services attorneys have encountered in encouraging the Department to bring the full force of the law against the most serious offenders. On many occasions

during the past several years, I have addressed suggestions to the highest levels of the Department concerning obvious investigative techniques for identifying and gathering evidence against the most serious violators of the Act. I cannot recall a single instance of favorable response to any of these suggestions or any occasion when the suggestions were followed. One suggestion was to encourage compliance officers to ascertain whether contractors and/or growers were making deposits of social security tax deductions in the manner required by the Federal Insurance Contributors Act. There has been no Departmental response to this suggestion. I encourage the committee to ask the spokespersons from the Department to explain what efforts they have undertaken to monitor payments of social security taxes.

More significant, the Department has exhibited a curious reluctance to promote criminal prosecutions of the serious violators of FLCRA. To fully comprehend the human consequences of this problem, it may be appropriate to review the history of crew leader Wardell Williams. Mr. Williams is now a resident of Wauchula, Florida. He is said to operate one of Florida's larger vegetable and fruit harvesting crews. Like me, he moved to Wauchula after beginning his career in Immokalee. In 1969, Mr. Williams pleaded guilty to the crime of involuntary manslaughter after he had killed his wife. In 1974, an information was sworn against him in Wauchula accusing him of sale of alcoholic beverages without a license. A few weeks later, Mr. Williams estreated the $250 bond which had been set for him. In early 1978, Florida Rural Legal Services filed a civil law suit against Mr. Williams on behalf of a farmworker whose pay receipts for his period of employment by Mr.

Williams tended to show that he never received more than $12.00 at the conclusion of week-long pay periods. Florida Rural Legal Services subjected the payroll records produced by Mr. Williams to a painstaking analysis and summarized their findings on a voluminous series of charts. As a result of this analysis and other discovery activities conducted as a necessary element of the civil litigation, it was concluded that proper law enforcement officials should be notified of possible violations of the criminal provisions of FLCRA and other criminal statutes. Meanwhile, in March and April of 1979, officials at the highest levels of the Department represented that enforcement efforts directed toward serious and repeat violators of FLCRA would become a Departmental priority. Accordingly, on May 30, 1979, the highest levels of the Department were provided with all the payroll charts and other information compiled by Florida Rural Legal Services concerning Mr. Williams' activities. An offer was made to afford any additional cooperation that was needed and a request was made that the Department keep Florida Rural Legal Services advised of progress in any criminal investigations. On July 5, more than a month following the delivery of the Williams' materials, the Department acknowledged their receipt. By September 13, now more than three months following delivery of the materials, the Department had failed to provide any updated information about the Williams matter and a request had to be made to learn the status of the case. A day later, I spoke with an attorney from the Criminal Division of the United States Department of Justice who had been identified as one of two individuals in that division with experience in FLCRA matters. He advised me

that he had received no files from the Department or any other communications regarding FLCRA criminal prosecutions since 1972. He had never heard of Wardell Williams.

Members of the committee, it is my belief that if we could find Wardell Williams crew today, we would find farmworkers subjected to conditions similar to those encountered by the man who sued Wardell Williams in 1978. If a member of your family were to be lured into Mr. Williams crew, how confident could you be that your relative would receive the justice due to him through the efforts of the Department of Labor?

I could probably testify for many hours about other serious and repeat violators who have encountered my clients. Briefly, I am constrained to say that they all continue in business and that if my present clients are correct, they continue to engage in the same practices which brought them to my attention in the first instance. Some of these individuals have been subjected to civil money penalties, but I am unaware of any efforts taken by the Department to collect these penalties.

IV. Enforcement can be Constructive

Grower representatives frequently contend that they cannot comply with FLCRA because of the expense associated with compliance. Should the committee receive such representations today, I hope that they will subject them to greatest scrutiny. Insofar as the cost of providing decent housing is concerned, the committee should be informed that the Farmers' Home Administration of the United States Department of Labor makes money available through sections 514 and 516 of the 1949 Housing Act at interest rates as low as 1% for rural rental housing projects for farm labor. FmHA indicates that

growers on Maryland's Eastern Shore have refused to accept such low interest loans because they do not wish to be individually liable for the notes. Clearly, the growers have made an economic decision in favor of incurring the possible costs associated with detection of their conduct instead of incurring the cost of 1% FmHA loans. Perhaps if the growers in Maryland were given more of an incentive to take advantage of FmHA programs by DOL enforcement activities, camps like Westover will cease to exist. Insofar as record-keeping requirements under FLCRA are concerned, they are not substantially different from the record-keeping requirements imposed upon every other American employer. Agribusiness must be called upon to articulate some justification for why it should be privileged and not subject to the rules of fair play and basic decency which govern the activities of other major employers.

The consequences of failing to bring meaningful sanctions upon repeat and serious violators of FLCRA impact upon the entire industry. Individuals failing to abide by the requirements of the law operate at a lower cost than their competitors. Obviously, a crew leader who does not pay social security taxes is not subject to a cost of more than 12% of his payroll which a law-abiding competitor must pay. Unless violators of the Act are punished, an ethic will prevail in agribusiness that you must act like Wardell Williams to survive as a farm labor contractor. The Department must initiate vigorous enforcement actions as soon as possible to prevent such an ethic from prevailing in the farm labor market.

V. Conclusion

The conditions related to the committee today hardly bespeak a need for less vigorous regulation of Farm Labor Contractors. The

abuses which we have attempted to document have resulted from corporate as well as individual conduct. Individuals who now violate the act could quickly adopt a corporate form and seek to exempt themselves from FLCRA coverage if the act is amended in the manner now proposed by agribusiness.

I hope that this committee will try as best as it can to insure that the Department of Labor extends the protection of the Act to more workers rather than permit the scope of the act to be seriously dimished.

Testimony of Arthur N. Read, Camden Regional Legal Services, Inc.
Subcommittee on Manpower and Housing, Committee on Governmental Operations
U. S. House of Representatives
November 13, 1979

My name is Arthur Read and I am an attorney with the Farmworkers Division of Camden Regional Legal Services, Inc. in Vineland, New Jersey.

I wish to focus the Committee's attention on an example of a Farm Labor Contractor whose treatment of his workers highlights the need for the Farm Labor Contractor Registration Act (FLCRA) as a tool to curb abuses. It also highlights need for more vigorous and effective enforcement of FLCRA by the U.S. Department of Labor. Finally this case shows what a tragedy it would be to exempt Farm Labor Contractors from the Act merely because they are "regular employees" of coroporate employers.

Marcos Portalatin is forty-four yearo old,300 pound farm labor contractor who was born in Puerto Rico and has worked in the South Jersey area for 20 years. In May 1974 he attacked a paralegal from Camden Regional Legal Services Farmworker Division with a knife when the paralegal came to the farm where he was the crew leader to speak to workers there. The paralegal escaped uninjured and Mr. Portalatin was ultimately convicted of a disorderly persons offense and fined $25. In July 1974 New Jersey State Assemblyman Byron Baer accompanied by reporters returned to the same farm and was attacked by Mr. Portalatin. Mr. Baer suffered a broken forearm and a newspaper reporter received cuts and bruises. The cars of Mr. Baer and others who accompanied him were attacked and their windows broken. In subsequent criminal proceedings Mr. Portalatin was

acquitted of all charges.

In September 1974 a federal grand jury indicted Mr. Portalatin on a nine count indictment charging amonst other things that he had held workers in peonage and had violated the civil rights of workers by his assaults on the representatives of Camden Regional Legal Services, a federally funded program. Mr. Portalatin was again acquitted on these charges. As these events occurred prior to the 1974 amendments to the Farm Labor Contractor Registration Act Mr. Portalatin's 1974 recruiting was exempt from the Act.

This year in April 1979 Mr. Portalatin apparently made arrangements with a neighboring South Jersey farm, Leonard Farms Corporation, to recruit a crew of 30-40 workers to harvest asparagus in rural Delaware near Wyoming, Delaware. Leonard Farms Corporation agreed to advance money for air fare for workers recruited in Puerto Rico. It was aparrently contemplated that upon completing the asparagus harvest in mid to late June, Mr. Portalatin would bring his crew to South Jersey to do work for both Leonard Farms Corporation and the farm where Mr. Portalatin had worked most of the previous 20 years, Rosario Sorbello and Sons.

Mr. Portalatin concentrated his recruitment of workers on the Ponce area and in a small mountanous town in the interior of Puerto Rico, Cidra. In his recruitment Marcos Portalatin looked for young teenagers who had never worked in the mainland U.S. and who did not know English.

In mid-April Marcos Portalatin, two of his daughters and his

his son-in-law visited the Cidra area. They succeeded in gathering a group of 12 potential workers who were promised that they would be able to make good money of $180 to $200 per week and that they would have 6 months of steady work in New Jersey. The workers were told that they would have to pay $30 a week for food and were promised good housing from which they would be free to come and go as they liked. None of the workers were given anything in writing.

At about the same time another group of workers was recruited by Marcos Portalatin and his son-in-law Ismael Guzman from amongst aquaintances of Ismael's from the Ponce area.

These two groups of workers were met at the San Juan airport a few days later by members of Portalatin's family and flew from there to the Philadelphia airport. From there they were transported to the Rosario Sorbello and Sons Farm in Swedsboro, New Jersey. It was here that their nightmare began. The workers were crammed into a small sleeping area with 19 to 24 beds which were not even two feet apart. The sheets and mattresses were dirty and broken and there was no place to put clothes. The bathroom did not have doors and the toilets were not working properly and had filled the place with a stench. After two days of no work there because of rain,the workers were all loaded into the Portalatin camper truck and transported to Delaware.

In Delaware the workers were aroused about 4 a.m. every morning. They were given a donut and coffee and then immediately crammed into the pickup truck and driven to the fields which were anywhere from 10 to 30 minutes away. In the fields the workers were set to work picking

asparagus at a back-breaking pace. Their only breaks were a 3 minute break in the mid-morning for food and a 5 to 10 minute lunch break. On the first day of work in Delaware one of the workers, a 19 year old youth began to feel strong pains in his back, stomach and head. When he complained of these pains Marcos Portalatin asked for the youth's asparagus knife and hit him with the handle end on his back, chest and the back of his head. As the boy stood up Marcos lunged at him again with the knife. Despite his pains the young man returned to cutting aspargus. A few minutes later when Marcos Portalatin saw the same worker talking to another worker, he told him he would be beaten if he didn't shut up and work.

After that the crew worked in fear. They were frequently forced to work faster by threats of what would happen if they didn't. Workers were told they would be run over by Portalatin's truck if they didn't work fast enough and at time he would drive the truck behind them in the fields accelerating it now and them to make them speed up.

The camp in Delaware was located in an isolated area and the workers were never permitted to leave it on their own except when they were permitted to walk in a group to a coin laundry nearby. While they were in the laundry, Portalatin would drive by in his truck regularly to see to it that no one tried to leave. Workers were told that if they left the police would bring them back and that they would be beaten. Indeed when some workers did successfully escape later, several other workers were driven to the police station while Marcos Portalatin went inside and were later told that the workers who had left were being held in jail.

When pay day arrived the workers learned that after deductions for food, sodas, cigarettes, alcohol, candy, travel,etc. they were entitled to virtually nothing. Several workers received only a penny for their 80-90 hours worth of work in a week. Any money which workers did receive they were persuaded to leave with Mr. Portalatin for "safe keeping". One worker who failed to heed Mr. Portalatin's instructions concerning leaving his money with him for safe keeping had all his money stolen while he was in the fields. When the worker demanded to call the police, Mr. Portalatin refused to allow him to.

In mid-May U.S. Department of Labor investigators from the Baltimore Area office met with Marcos Portalatin and one of the corporate officers of Leonard Farms Corporation. Despite an apparent claim by Leonard Farms Corporation that Mr. Portalatin was a regular employee of theirs, U.S. Department of Labor investigators determined that Mr. Portalatin was a Farm Labor Contractor. These investigators explained to Mr. Portalatin his obligations under the Farm Labor Contractor Registration Act. The U.S. Department of Labor representatives apparently made no attempt to speak to workers about their conditions of work or recruitment at that time. They determined that so long as Mr. Portalatin voluntarily registered as a Farm Labor Contractor, they would do no more than recommend assessment of civil money penalties against him.

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Within days of Mr. Portalatin's meeting with the U.S. Dpartment of Labor representatives and without having filed any registration papers as a farm labor contractor, Mr. Portalatin sent one of his daughters back to Cidra, Puerto Rico to recruit more boys for the asparagus work. Again glowing promises of good living and working conditions were made to the youths and their parents. Again nothing was given to the recruited workers in writing. Again a group of teenage boys who had never worked in the mainland U.S. and most of whom did not speak English were recruited to come to work.

This new group of workers arrived in Philadelphia on an evening flight from Puerto Rico. They were packed with their baggage like sardines into Mr. Portalatin's pickup camper van and a car and arrived at the farm labor camp in Delaware at 1 a.m. Only a couple of hours later this group of workers were ordered out of bed at between 3:30 and 4:00 a.m. and told to get up for work.

These workers were similarly paid as little as a penny in net earnings for their 80-90 hours of work in a week. They were not permitted to leave the camp and one worker who was overheard threatening to escape had his pockets slit open and his money taken away for "safe keeping". Other workers were shown abandoned graves in fields where they were working and told that they could expect to end up there if they did not do as they were told. Another worker from this new group was beaten for not working fast enough when he had back pains. Again workers were told if they left

the police would come after them.

In early June George Carr of Legal Aid Bureau of Maryland and Camden Regional Legal Services learned of Mr. Portalatin's Delaware operation. Mr. Carr contacted the U.S. Department of Labor's Region Three and Baltimore area offices and requested a full investigation of the camp. Following this it was learned for the first time that an earlier investigation had been conducted in May. The U.S. Department of Labor promised a further thorough investigation. Mr. Carr stressed to the U.S. Department of Labor's area director that it would be necessary for U.S. Department of Labor officers to find a way to speak to workers in confidence so that they would not be subject to retaliation. His concerns were apparently considered exaggerated by U.S. Department of Labor officials.

Workers in the farm labor camp were meanwhile given strict instructions by Mr. Portalatin that they were not to speak to anyone from outside the camp. They were told that they knew what would happen to them if they did. When investigators were expected some workers were told the police were looking for them and were made to hide in the woods for hours.

This time the U.S. Department of Labor agents did reveiw some wage records. They determined that excessive deductions from wages had been made for travel advances and further apparently learned that no proper records of hours worked were kept. No effort was made to

have Mr. Portalatin document other deductions that did not appear in the farmer's pay records. No effort was made to question workers out of the presence of the crew leader,or to determine the number of hours which workers had been working, or to determine what workers had been promised at the time of recruitment.

Following this inspection and complaints from another worker who had escaped the camp about mistreatment and beatings of workers, Leonard Farms Coporation claims to have decided to fire Mr. Portalatin. Mr. Portalatin responded by taking the bulk of the workers to the Rosario Sorbello and Sons camp in New Jersey.

In late June the Farmworkers Division of Camden Regional Legal Services was retained by several workers who had managed to leave the Portalatin camp. Subsequently the step brother of one of these workers indicated that he wanted to leave the camp if we would assist him to recover his possessions. That night when we went with local police to recover his possessions, six more workers asked to be able to leave the crew with us.

Because of the workers accounts of fear and intimidation at the hands of Marcos Portalatin , we asked that their paychecks be mailed to our office on payday. When this did not occur we contacted the farm to try to arrange to pick up their checks. Subsequently Marcos Portalatin left a message that the workers checks were available, but that they would have to come get them. By telephone we then advised Mr. Portalatin that we had signed authorizations to pickup the worker's checks. We

were then invited to come to the farm to pick them up. While at the farm in Mr. Portalatin's kitchen I was attacked and nearly killed by him.

Unfortunately despite all the publicity and attention on the plight of migrant farm workers that was stirred by this incident, we have still been forced to contend with a bureaucracy that is excessively slow and inefficent in responding.* We were able to establish a good working relationship with the Trneton area office of the U.S. Department of Labor, but we discovered that the U.S. Department of Labor's fragmentation into different Regions and Area Offices made effective coordination of an investigation crossing different Regional and Area boundaries imposssible.

The bulk of our clients from the Portalatin camp were so overwhelmed and frightened by their experiences with Marcos Portalatin that they wanted above all else to return to Puerto Rico as soon as possible. We were forced to follow the clients to Puerto Rico to complete the affidavits necessary to establish the full pattern of Marcos Portalatin's acts. At no time were agents from the U.S. Department of Labor office in Puerto Rico utilized for follow-up on the Portalatin crew and indeed it is our understanding that the U.S. Department of Labor office in Puerto Rico conducts virtually no FLCRA investigations despite the large number of migrant workers recruited there.

Although the U.S. Department of Labor's Trenton Area office of the Wage and Hour Division agreed to allow us to supply affidavits from

*Indeed Maria Portalatin who had been involved in the recruitment was promptly and without question registered as a Farm Labor Contractor within days after I was stabbed and her father fled to Puerto Rico.

clients so as to complete the investigation of Marcos Portalatin, his family and the farmers who employed him, the U.S. Department of Labor's Baltimore Area office of the Wage and Hour Division insisted on closing its investigation by settling for $60 per worker to be repaid by Leonard Farms Corporation for excess travel deductions. This was despite the Baltimore Area office's failure to determine the hours worked by those in the Portalatin crew.

Furthermore, despite the fact that the Trenton Area office was directed to close its FLCRA investigation in mid-August, we still have received no notification as to whether the U.S. Department of Labor is prepared to pursue criminal charges under the Farm Labor Contract Registration Act against Marcos Portalatin and others involved in his operation. Given how seldom the U.S. Dpeartment of Labor has pursued criminal charges against FLCRA violators, this failure to act with speed is hardly surprising. It is clear that without constant prodding by counsel for vicitims, Congress and publicity, criminal prosecutions would never have been considered here despite the conditions of virtual peonage under which these teenagers were required to work.

Finally, it is important to take note of the effect of current attempts to exempt all corporate farms and their employees from the Farm Labor Contractor Registration Act. Had amendments to FLCRA such as those proposed in H.R. 5575 been in effect, it is clear that Leonard Farms Corporation would have claimed that Mr. Portalatin

was a regular employee exempt from the Act. However ineffective U.S. Department of Labor enforcement of FLCRA may be, the fact remains that the Farm Labor Contractor Registration Act provides one of the only effective means for redressing the abuses that migrant farm workers can and do suffer at the hands of unscrupulous crew leaders such as Mr. Portalatin. Amending this Act would strip farmerworker attorneys and advocates of one of the only effective tools we have for redressing the injustices suffered by many migrant farm workers. This should not be allowed to happen.

Mrs. COLLINS. Our next witness will be Mr. Craig Berrington, the Deputy Assistant Secretary of Labor for the Employment Standards Administration. He will be accompanied by Mr. Basil Whiting, Deputy Assistant Secretary for OSHA, and Mr. David O. Williams, Administrator of the U.S. Employment Service in the Department of Labor.

Would you identify yourselves for me, please?

STATEMENT OF CRAIG BERRINGTON, DEPUTY ASSISTANT SECRETARY OF LABOR, EMPLOYMENT STANDARDS ADMINISTRATION; ACCOMPANIED BY BASIL WHITING, DEPUTY ASSISTANT SECRETARY, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION; DAVID O. WILLIAMS, ADMINISTRATOR, U.S. EMPLOYMENT SERVICE; AND RONALD WHITING, ASSOCIATE SOLICITOR, GENERAL LEGAL SERVICES

Mr. BERRINGTON. Good morning, Madam Chairwoman. I am Craig Berrington.

Mrs. COLLINS. Good morning.

Gentlemen, we have your testimony in full. May I ask you to summarize it, with the knowledge that this will all be placed in the record, because we, unfortunately, are short of time.

Mr. BERRINGTON. Certainly, Madam Chairwoman.

Mrs. COLLINS. Without objection, it will be included in the record.

Mr. Berrington?

Mr. BERRINGTON. Thank you, Madam Chairwoman, and thank you, members of the subcommittee, for the opportunity to be here today to discuss the Labor Department's enforcement of important Federal laws relating to protection of farmworkers.

During the past 2½ years, this administration, and particularly Secretary of Labor Ray Marshall, has given high priority to improving both the working conditions of the Nation's farmworkers and the living conditions of Americans who live in rural areas.

I will start the presentation by giving a brief overview of the Labor Department's activities. My colleagues will then discuss the OSHA responsibilities and the Employment and Training Administration responsibilities, particularly those carried out through the U.S. Employment Service.

All of these programs are closely interrelated, and we have been making special efforts over the last 2 years to coordinate them. We have established task forces to deal with specific problems on coordination dealing with housing and the importation of temporary foreign labor.

For example, as a condition of accepting interstate clearance orders for the recruitment of workers, the Employment and Training Administration conducts preoccupancy inspections of temporary farmworker housing; the OSHA also has responsibilities for housing conditions, but those responsibilities are more limited to the time in which farmworkers are actually occupying the housing or doing so imminently.

The Employment Standards Administration, again with another piece of this activity, has responsibilities under FLCRA to obtain

assurance from farm labor contractors that the housing camps they either own or control meet Federal standards.

Recently, these three agencies—the Employment Standards Administration, ETA, and OSHA—have completed an agreement on coordination of housing inspections. The agreement includes provision for coordinated targeting of housing inspections, for shared housing inspection information, and for referral of unsafe housing situations to the agency that can best handle the enforcement in accordance with the particular status of the housing at the time.

That housing coordination agreement serves as a major accomplishment to bring the three laws and three responsibilities into harness.

Mrs. COLLINS. Mr. Berrington, if you would permit, I think most of the members of the subcommittee are familiar with what the Department of Labor as well as the other departments are supposed to be doing about this problem. So, perhaps you could just skip that. We would very much appreciate it.

Mr. BERRINGTON. Certainly.

Let me move, if I may, to some of the items pertaining to enforcement of FLCRA, especially since those matters were discussed earlier.

We do require farm-labor contractors to register, and the amount of registration which is done and which is required is one important indication of the effectiveness of the administration of the law generally.

Mrs. COLLINS. Let me ask you a question on that point before you move away from it.

Both groups have testified that there is overregistration. You are dealing with registering instead of getting down to spending your manhours on some of the very important violations that are there. What would be your response to that?

Mr. BARRINGTON. We do not believe that there is overregistration because registration is not just a paper process. Registration includes the requirement that the farm-labor contractor adhere to certain substantive provisions of the law; also, it gives us a record of farm-labor contractors for purposes of further tracing, for determining violations, and for the dissemination of information.

Mrs. COLLINS. It is my understanding that the Department has indicated an increase in registration during 1978 which arose during its enforcement drive. The question has been raised, why was a significant length of time spent in the seed corn industry, for example, when the majority of seed corn workers are local, mainly high school students?

Mr. BERRINGTON. We have no longer take the position that, where students are involved, registration is necessary as a general matter. Indeed, I would agree that the Department's enforcement resources were not most effectively utilized in that kind of situation.

But it is important, I think, to look at the registration statistics, not because they tell the whole story, but because they do tell part of the story.

Mr. BUTLER. May I interrupt at this point?

Mrs. COLLINS. Certainly.

Mr. BUTLER. I just want to be sure I understand what you are saying. You had a change of position with reference to whether students should register. Is that what you are saying?

Mr. BERRINGTON. There is a great deal of corn detasseling which is done by students—high school students to a large extent—during the

summer months in many States. In many instances, the transportation or the supervision of those students is done by high school teachers or coaches. In November 1978, an amendment to FLCRA was included in the Perishable Agricultural Commodities Act Amendments that excluded farm-labor contractors who were engaged solely in supplying full-time students to detassel hybrid seed corn. We have taken the position that in those kinds of situations where we are not dealing with traditional migrant and agricultural farmworkers, the registration requirements of the act are not to be vigorously pursued.

Mr. BUTLER. That is your current position. How much energy did you extend going off in the other direction?

Mr. BERRINGTON. Too much.

Mr. BUTLER. Is this a unique situation, or are you going to tell us the rest of those examples?

Mr. BERRINGTON. The situation with corn detassling, while perhaps not the only possibility, was in any case a fairly unique one.

Mrs. COLLINS. I wonder if I can get a unanimous-consent agreement, because time is so limited, to start questioning our witnesses with the understanding that much of what they have in their testimony will be brought out through the questioning. Does anyone object to that?

Mr. MAGUIRE. No objection.

Mr. BUTLER. I have no objection.

Mrs. COLLINS. Thank you.

Mr. Berrington, in your prepared statement, you say, on page 10, that top priority has been given to identifying and investigating contractors who have repeated violations. You say, "This administration has given high priority to improving the working conditions of the Nation's farmworkers." But when I look at the data which your Department supplied to this subcommittee on the small number of people assigned to enforce the Farm Labor Contractor Act and the almost total lack of civil and criminal penalties which have been meted out, I reach a different conclusion.

First, I would like to ask if you believe 58 man-years for enforcement is evidence of a high priority being placed on the administration of this act by the Department.

Mr. BERRINGTON. We have substantially increased the priority over the last 2½ years.

Let me give you some statistics because I think, if you look just at the man-years devoted to it, you do not get the full picture. Although we have not, in fact, devoted as many man-years as we would have wanted or planned to last year, or will next year, if you look at the enforcement actions—the baseline activity—you will see a much more dramatic increase.

In 1975, for example, there were fewer than 1,000 enforcement investigations conducted under FLCRA in that entire fiscal year. In 1978, there were 3,823; and in fiscal year 1979, even though we did not reach the entire manpower complement that we wanted to, we increased the number of enforcement actions to 5,708. That is an increase of 66 percent over a year. We think that shows some progress.

Mrs. COLLINS. Why have so few positions been budgeted for enforcement, and why has this budgeted level of enforcement not actually been allocated to FLCRA?

Mr. BERRINGTON. The FLCRA budget has increased. n fact, it almost doubled within the past year. The budget for FLCRA is related to the salaries and expense budget for the Employment Standards Administration, which involves the Fair Labor Standards Act as well.

In some specifics, I believe the budget was approximately $1.2 million just a few years ago, and it is about $2.6 million now. I can get the exact figures for you, but the budget has increased substantially.

Mrs. COLLINS. Without objection, those figures will be included in the record at this point.

[The material follows:]

FLCRA BUDGET FROM FISCAL YEAR 1975 THROUGH FISCAL YEAR 1980

	1975	1976	1977	[1] 1978	1979	1980
Total budgeted positions	19	38	38	38	72	72
Compliance officer positions	16	28	28	28	58	58
Support positions	3	10	10	10	14	14
Budget (in thousands)	$514	$1,058	$1,154	$1,277	$2,168	$2,281

[1] Does not include 30 compliance officer and 4 support staff positions received in a 1978 supplemental passed on Mar. 7, 1978. The compliance officers could not be hired and trained to become fully effective before the end of the fiscal year.

Mrs. COLLINS. I believe it was Mr. Ellsworth's testimony, and the group who just left the table agreed, that of all these enforcement citations, only 5.2 percent were for meaningful citations. Why is that number so small?

Mr. BERRINGTON. I do not agree with that, and I can show you data on that point.

The specific data on the budget were: In 1978, the budget amount for FLCRA enforcement was $1,277,000; in fiscal 1979, it was $2,168,000; and we plan to increase that in 1980. I should also add that that does not represent the full amount of activity spent on FLCRA because we have joint investigations involving the Fair Labor Standards Act, and the full amount spent is somewhat in excess of these amounts.

Mrs. COLLINS. Will you provide for the subcommittee the kinds of citations that were issued, similarly to what has been done by Mr. Ellsworth's group? Then we can see from a comparative analysis what you thought was important and critical. I find agreement between both of the groups who were just here that a lot of time is being wasted on what they consider to be unimportant things, certainly not getting at what the meat of the act is supposed to be.

Mr. BERRINGTON. Yes. I would be glad to supply those data.

Mrs. COLLINS. Without objection, they will be included in the record at this point.

[The material follows:]

The attached table represents violations of the Farm Labor Contractor Registration Act found during FY-1979. The statistics, shown by Regions and National totals, indicate the number of times farm labor contractors, farm labor contractor employees, and users of farm labor contractors were cited for violations of the specified Sections of the Act.

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION

SUPPLIED BY:
BRANCH OF WAGE HOUR STATISTICS
DMICS-OAM-ESA

TABLE 1: REGIONAL SUMMARY OF FLCRA COMPLIANCE ACTIONS
PERIOD OF 09-21-78 TO 09-20-79

DETAILS OF COMPLIANCE ACTIONS	ALL REGIONS	BOSTON	NEW YORK	PHILA	ATLANTA	CHICAGO	DALLAS	KANSAS CITY	DENVER	SAN FRAN	SEATTLE
FLC/FLCE VIOLATIONS	2313	67	129	233	602	176	608	31	50	388	29
1A NO CERTIFICATE 4(A)	712	56	12	58	174	42	127	21	23	186	13
1B NO ID CARD 4(B)	482	2	29	43	172	23	90	3	21	95	4
2 FAIL TO EXH CERTIF 6(A)	987	56	28	72	315	68	178	23	31	209	16
3 DISCLOSE TO WKRS 6(B)	867	56	44	100	255	100	177	24	6	108	19
4 POST AT SITE 6(C)	956	62	42	66	233	98	278	24	12	116	25
5 MISREP TO WKRS 5(B)(2)	25		5		4	4	5	1	1	2	3
6 FAIL TO KEEP RECS 6(E)	110		8	10	40	7	22	14	2	6	3
7 INACC/INCOMP RECS 6(E)	133		2	24	42	11	32	1		20	1
8 RECS FURN TO USER 6(E)	308	2	14	33	69	12	62	11	2	86	17
9 STMT OF $ TO WKR 6(E)	827	62	51	116	264	34	183	13	3	86	15
10 ILLEGAL ALIEN WKRS 6(F)	215		4	20	62	6	72		10	36	5
11 PROPER $ PAYMENTS 6(G)	32		3	4	11	1	2	1		8	2
12 WORKER PURCHASES 6(H)	10		1	2	3		2		1	1	
13 UNAUTH TRANSP 5(A)(4)	551	54	29	62	179	24	143	10	11	42	7
14 OPER VHCL USED 5(B)(8)	695	58	38	76	276	21	153	7	9	52	5
15 VHCL SAFETY 5(B)(8/12)	307	18	5	31	95	8	120	6	9	12	3
16 VHCL INSUR 5A(2)/B(5)	396		19	41	149	15	130	8	10	20	4
17 NOT TO SEC VHCL 5(D)	89		2	15	54	7	5		3	3	
18 UNAUTH HOUSING 5(A)(4)	224	5	24	47	78	16	16	5	12	17	4
19 HOUS SFTY/HLTH 5(B)(12)	158		4	45	77	3	13	4	4	5	3
20 POST HOUS CONDS 6(D)	187	1	10	36	67	10	13	3	7	17	3
21 NOT TO SEC HOUS 5(D)	67		2	5	40	2	2		4	12	
22 FLSE STMTS APPL 5(B)(1)	36	1	1	1	24		2		3	3	1
23 BOGUS CERT HDR 5(B)(11)	9		1		6	2					
24 BREAK WKR AGREE 5(B)(4)	24		3		8	3	1			7	2
25 BREAK USR AGREE 5(B)(3)	19		4		6	1	2			5	1
26 DISCR TESTIFIERS 13(A)	5		2		2						1
27 HIRE UNREG FLC 4(C)	57	1	4	8	25	3	15			1	
28 HIRE UNRG FLCE 5(B)(10)	348	3	24	39	126	10	69	3	8	64	2
29 HIRE DISQL FLC 5(B)(9)	6		1		2	2				1	
USER VIOLATIONS	706	20	20	99	154	57	91	22	15	187	41
30 HIRE UNREG FLC 4(C)	546	19	14	79	142	49	65	19	15	105	39
31 FAIL KEEP PAYROLL RECS	52			2	5	3	4	6		32	
32 INACC/INCOMP PAY RECS	9			4	1		4				
33 FAIL OBTAIN CONTR RECS	190		9	14	43	11	28	11	2	46	8
34 INCOMPLETE CONTR RECS	116	1		2	16	1	13			78	5
35 DISCR TEST FLCRS 13(A)	4				2		1	1		1	

Mr. BERRINGTON. We agree. We would like to spend, and we have been spending more time, on the meat of enforcement.

Mrs. COLLINS. Why?

Mr. BERRINGTON. Why should we be spending more time on it, or why——

Mrs. COLLINS. Why have you not?

Mr. BERRINGTON. Because we have had substantial resistance to even the basics of the act.

Mr. MAGUIRE. Could we ask from whom, Madam Chairwoman.

Mrs. COLLINS. Yes, indeed. From whom?

Mr. BERRINGTON. I think the litigation speaks for itself as far as substantial resistence is concerned from the farmowner and the corporate farm community. There is resistance, as Mr. Ellsworth pointed out, to the Department's reading of this law since it was amended in 1974 to cover corporate farming activity. There is also resistance from the farm labor contractors who move around very frequently.

It is very difficult for any organization to get a handle on that. Until we can deal with the registration problem—although that is not the be-all and the end-all by any means—and until we can deal with some of the basic issues, it is going to be difficult, although not impossible, to get to the meat of the act.

Mr. MAGUIRE. The next question, then, is this. Given the resistance which you have explained——

Mr. BERRINGTON. Mr. Ellsworth has explained, I think.

Mr. MAGUIRE [continuing]. How does that affect the Department of Labor's behavior on this matter?

Mr. BERRINGTON. For example, there are instances of corporate farms bringing injunctive actions against the Department to try to keep it from enforcing the act. While they have not been entirely successful, they have caused difficulties in various parts of the country for the Department.

Mr. MAGUIRE. Thank you, Madam Chairwoman.

Mrs. COLLINS. I do not find that a totally acceptable argument because I think the Department of Labor has a mandate from Congress as well as from the people of the United States to implement the act that the Congress passed. I can understand where there might be some legal problems; but I do not understand, especially since the criminal provisions have been put in, (1) how your hands can be so critically tied that you cannot get down to the nuts and bolts of what is going on here, and why people still today are living in totally substandard housing, (2) how people can get 1 penny for a week's work, and (3) how you have almost slave labor, if you will, and the Department does not at least raise an eyebrow let alone do some serious enforcement of its own laws. I just cannot understand that. I find that very difficult to swallow.

Mr. BERRINGTON. Madam Chairwoman, from the period of September 1978 to September 1979, the Department has carried out almost 6,000 compliance actions.

Mrs. COLLINS. What has that resulted in?

Mr. BERRINGTON. We have numerous injunctions against employers, against farm labor contractors; as the testimony indicates, we have assessed several million dollars in penalties against farm labor contractors.

Mrs. COLLINS. How much have you collected?

Mr. BERRINGTON. Not nearly as much as we would like.

Mrs. COLLINS. How much?

Mr. BERRINGTON. I think over $300,000.

Mrs. COLLINS. Only $300,000?

Mr. BERRINGTON. It is a judicial process, and the courts take a very active role.

Mrs. COLLINS. Are the employers' records sufficient to get the money into the hands of the affected workers themselves?

Mr. BERRINGTON. In some cases, yes; in some cases, they are not.

Mrs. COLLINS. What is the average percentage of earnings?

Mr. BERRINGTON. I would be glad to supply that for the record.

Mrs. COLLINS. Without objection, it will be included in the record at this point.

[The material follows:]

Civil money penalties assessed under the Farm Labor Contractor Registration Act are, pursuant to Section 9(b)(5), "paid into the Treasury of the United States." No monetary collection of the penalties is distributed to the affected workers. Accordingly, information is not collected to show the average percentage of earnings. Should workers be found due monies under the Fair Labor Standards Act from farm labor contractors, collection would be handled under that Act. Agricultural workers received restitution of minimum wages and overtime pay under the Fair Labor Standards Act in FY 1979 of $1,933,026 of $3,349,662 found due.

Mrs. COLLINS. Let me ask you about a case I happen to have my hands on right now. We have this case on file where an administrative law judge issued a decision on December 28, 1978. This is one of the Department of Labor cases, incidentally. It denied a crewleader his contract certificate of registration for 1977 and 1978 and assessed a money penalty of $8,500 on two counts.

This contractor had been investigated again in 1975 with a consent judgment against him, and again in 1976 another consent judgment.

Apparently the crewleader worked during 1977 and 1978 despite the retroactive denial of his certificate. Here is a crewleader who violated the law in 1975, 1976, 1977, and 1978. And what I want to know is, do we have the money yet?

Mr. BERRINGTON. I do not know the name of the case. I am sure you can give it to me.

Mrs. COLLINS. I will let you see it. I do not know if I should reveal the name of the case because apparently the case is still going on, but you are welcome to look at this.

Mr. BERRINGTON. We will be glad to provide that information for you.

[The material follows:]

The Department of Labor obtained injunctions against this individual in 1975 and 1976 for labor standards violations. He was assessed civil money penalties under the Farm Labor Contractor Registration Act (FLCRA) of $4,050.00 on January 28, 1977, $4,450.00 on May 25, 1978, and $3,650.00 on August 2, 1978. On December 29, 1978, after a hearing was held, an administrative law judge ordered full payment of the $12,150.00 in civil money penalties. The judge also ordered the denial of the farm labor contractor registration certificate for the individual for 1977 and 1978, but not for 1979.

The Department has had difficulty in locating this individual and has asked the F.B.I. to seek to locate him. The Department is planning to refer the file in the very near future to the appropriate U.S. Attorney's office in accordance with the statute for collection of the civil money penalties.

Civil money penalties amounting to $2,350.00 were also assessed against this individual's wife on June 21, 1979. The hearing which he has requested has not as yet been scheduled.

Mrs. COLLINS. And that is 4 years this has been going on; nothing has happened. Without even knowing what case this is, can you address the fact that it has been 4 years that this kind of flagrant violation has been going on? Has anything been done?

Mr. BERRINGTON. Obviously——

Mrs. COLLINS. Obviously, nothing has been done.

Mr. BERRINGTON. No; obviously, things have been done, but I do not know about the case specifically.

Mrs. COLLINS. I think cases like this are illustrative of a number of cases that you have on file where there is just no action taken. These things recur, and recur, and recur, and nothing ever happens, and the Department acts as if it does not know about them, but clearly it does.

What is the cause for something like that? Is it all attributable to backlog?

Mr. BERRINGTON. The litigation process is within the control of the Solicitor. I have here the Associate Solicitor, Mr. Whiting. Maybe he would like to address it.

Mrs. COLLINS. How much backlog is there, Mr. Whiting?

Mr. WHITING. May I step up to the table?

Mrs. COLLINS. If you identify yourself for the record.

Mr. WHITING. I am the other Mr. Whiting.

Mrs. COLLINS. Which Mr. Whiting are you?

Mr. WHITING. I am Mr. Whiting with the Solicitor's office.

Mrs. COLLINS. What is your first name?

Mr. WHITING. Ron.

Mrs. COLLINS. Ron Whiting—OK.

Mr. WHITING. I am the Associate Solicitor for General Legal Services, which encompasses a whole range of programs, including FLCRA.

I am not sure what case it is you are talking about, but certainly there have been some injunctions obtained in the past where we have received information indicating subsequent violations.

The way we will be going about this will be to go back to those courts and have an investigation, and talk in terms of contempt actions. Once we have the injunctions, that is probably our best handle.

Mrs. COLLINS. How often do you follow up? It seems to me it is a question of followup. I understand that there have been only 22 hearings held in the first place and that there is a backlog in the Solicitor's office of approximately 1,000 cases.

Mr. WHITING. Let me address that issue, if I may.

Mrs. COLLINS. Yes. And then get back to the followup. I want you to address those two things.

Mr. WHITING. OK.

On the backlog, as you will remember, the real enforcement mechanisms were put into this act in late 1974 with normal gearup to the end of the pipeline after the penalties assessment systems are in place and after the investigations. Even as late as 1977, the number of contests under this act was only 99. However, in 1978, when the enforcement really hit, we had a sixfold increase of administrative legal actions referred to the Solicitor's office. I think there were something like 640 in that year. What happened, quite frankly, was that during that same period we were heavily involved in some court of appeals litigation, in interpreting some of the acts.

We have been doing some of the opinion work, and within my own

division, we have a whole group of laws we have to concern ourselves with.

We recognized early on that we were not going to be able to handle the litigation in Washington under this program; but also in the last 1½ years, the DOL has had to undergo 5 or 6 substantial decentralizations to our regional offices, of which there are approximately 15.

For instance, we inherited all Government enforcement of the OFCCP, or the Civil Rights Government Contract Act.

Mrs. COLLINS. We understand all that. We hear that every time we have a hearing. Someone comes in here and tells us all about the encumbrances. We realize that there are some. But we do expect to see some kind of positive actions on things that are brought to your attention, either through your own people or through the newspaper, or through word of mouth, or whatever. I can fully understand where you might have a lot of legal processes to go through, but your track record is lousy.

Mr. WHITING. Let me tell you what we have done, and what I think will happen in the future, and what I know will happen in the future.

We did try to establish some priority in our own office to revocation cases, to undocumented worker cases, and, to the extent we could, repeat violator cases. We also decentralized about 8 months ago all of the cases that the California region had, the reason being there that that particular region had the resources available to handle the cases more rapidly. As a matter of fact, the statistics we supplied this committee, we realized afterwards, do not include—I believe the statistics were somewhat over 100 cases that have been filed under the administrative procedures. That did not include 44 that have been filed directly by the California office.

I have pulled other people off other programs in the last 2 months within my own office to try to give this priority. We have filed something like another 140 cases. We now have 270 cases.

Given the repetitiveness of the backlog because of the increase in wage-and-hour investigations, we still realize we are going to have to decentralize the function to our regional offices, and we are in the process of doing the decentralization.

Mrs. COLLINS. When do you hope to get through the process?

Mr. WHITING. We hope it will be intact and working by early December.

Mrs. COLLINS. You do not have to use lawyers to handle these cases do you?

Mr. WHITING. To handle the actual hearings in front of the administrative law judges?

Mrs. COLLINS. Yes.

Mr. WHITING. We feel we do because we do run into a lot of legal issues, some of which end up in the court of appeals. You also have the problem that you are going to be cross-examining witnesses, and defendants—or the bigger defendants or repeat violators—are represented by good counsel.

Mrs. COLLINS. I have about five more questions, and I have used up all my time, but just answer one for now. Why don't your compliance officers present the cases? Is it not possible, in some of the cases, that they could do that for the administrative law judge? Is that not better than having the cases go stale and then throwing them out?

Mr. WHITING. We all hope the new system will go a long way toward remedying that problem. But in terms of the other side being represented by counsel, I think we would have a problem if we did not have an attorney. I think we would be criticized for not having adequately presented the case.

Mrs. COLLINS. OK.

As I said, I have some more questions, but I am going to yield to Mr. Butler who wants to ask his questions, and then we will go on to Mr. Maguire who also has questions he would like to ask.

Mr. BUTLER. Thank you.

Are your remedies adequate under the statute? Are there any changes that need to be made there? You cannot blame it on the act, can you?

Mr. WHITING. I should probably defer to the administrative people on that. I would have to say that there is a broad range of remedies, and when I was talking about what we were just doing recently, I was only talking about one of three or four possible actions that can be taken. We can take a licensing action; we can take a civil money penalty action; we can take a criminal action; and we can take an injunctive action. So, there is a fairly wide range.

Mr. BUTLER. The spectrum is broad enough, is it not?

Mr. WHITING. Yes. And the backlog I was talking about was the civil money penalty. We are not talking about the injunctive backlog, the licensing backlog, or the criminal backlog.

Mr. BUTLER. But they are on roughly the same "rapid" pace of resolution, are they not?

Mr. MAGUIRE. Would the gentleman yield? I wonder if he would make sure that the word, "rapid," is enclosed in quotation marks in the record, because I think that was the way the gentleman intended it, was it not?

Mr. BUTLER. Your perception is correct.

Mr. WHITING. As to anything else, I should defer to Mr. Berrington, I think.

Mr. BUTLER. Mr. Berrington?

Mr. BERRINGTON. As a statutory matter, the remedies are adequate.

Mr. BUTLER. Now, let us turn to a suggestion made in the testimony. According to a previous witness, the Department has not published regulations to comply with the 1974 amendments. My question, of course, is: Why not? What is your timetable with reference to that? While we are on that, you might also address yourself to the letter of January 4, 1978, containing some 21 questions—as to why that has not been answered.

Mr. BERRINGTON. It is not true that the Department has not published regulations under the act. I have them here.

Mrs. COLLINS. Without objection, they will be included in the record at this point.

[The material follows:]

The attached Regulations, Part 40: Farm Labor Contractor Registration Subpart A-Registration, Subpart B-Administrative Proceedings, were promulgated by the Secretary of Labor pursuant to authority contained in the Act. The Regulations relate to the issuance, renewal or replacement of Farm Labor Contractor Certificates of Registration and Employee Identification Cards, the obligations and responsibilities entailed in the Act, the issuance of civil money penalties and the rules of practice for administrative hearings.

Regulations, Part 40:
Farm Labor Contractor Registration
Subpart A-Registration
Subpart B-Administrative Proceedings

Title 29, Part 40 of the Code of Federal Regulations

Registration Requirements and Administrative Proceedings including
Assessment, Notice, and Collection of Civil Money Penalties for Violations

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

WH Publication 1369
Revised August 1979

Regulations, Part 40: Farm Labor Contractor Registration

Subpart A — Registration
Subpart B - Administrative Proceedings

This publication conforms to the Code of Federal Regulations as of August 13, 1979, the date this reprint was authorized.

PART 40—FARM LABOR CONTRACTOR REGISTRATION

Subpart A—Registration of Farm Labor Contractors and Their Full-Time Employees

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Registration Requirements

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AUTHORITY: Sec. 14, 78 Stat. 924, and sec. 17, 88 Stat. 1659 (7 U.S.C. 2053); Secretary's Order No. 16-75, 40 FR 55913; and Employment Standards Order 2-75, 40 FR 56743.

SOURCE: 41 FR 26820, June 29, 1976, unless otherwise noted.

Subpart A—Registration of Farm Labor Contractors and Their Full-Time Employees

GENERAL

§ 40.1 Purpose and scope.

(a) Congress, in enacting the Farm Labor Contractor Registration Act of 1963, as amended ("the Act"), found "that the channels and instrumentalities of interstate commerce are being used by certain irresponsible contractors for the services of the migrant agricultural laborers who exploit producers of agricultural products, migrant

Mr. BERRINGTON. We do have regulations for the act, as amended in 1974.

If I can get to what I think Mr. Ellsworth was talking about, I believe it is important to know that regulations, which is the primary way in which Federal agencies inform the world about their activities, have been published.

Mr. BUTLER. They rewrite the statute, and then they go to interpretive rulings, or something of that nature.

Mr. BERRINGTON. Without comment on that, regulation have been in place for several years.

There is, however, an interpretive bulletin, which goes beyond the regulations, which we have been working on, and which we hope to have completed fairly soon.

But as to the basic regulatory processes and requirements, they have been on the books for some time.

In relation to the letter that was mentioned, it raises numerous questions, many of which have been answered in opinion letters that the Department has issued. I believe we have issued 23 opinion letters in addition to the regulations. There are other questions which have, I suspect, not been answered in a public form. We can have a letter completed shortly—within the next 10 working days—and we will do so.

Mrs. COLLINS. Will the gentleman yield?

Mr. BUTLER. Surely.

Mrs. COLLINS. That brings me to Mr. Ellsworth's statement. He talks about Charles Kelso, counsel for the Florida Fruit & Vegetable Association. He says they have been waiting 2 years to get some kind of written reply. Do you know anything about that particular thing, or can you look into it?

Mr. BERRINGTON. Yes, I would be glad to. We can get a response. It is inappropriate that a specific response did not go out earlier.

As a mitigating factor—and I say it only as a mitigating factor—but not in derogation of the need for a response, Mr. Kelso and Mr. Ellsworth, I believe, are aware of the opinion letters—the public opinion letters—which the Department has issued. I believe Mr. Ellsworth is on our mailing list, as a matter of fact. Many of the issues raised—but by no means all of the issues raised—by Mr. Kelso's letter have been addressed in that way.

Mr. BUTLER. Just to pin this down, you are going to respond specifically to this January 4, 1978, letter within 10 working days?

Mr. BERRINGTON. Yes, we will.

Mr. BUTLER. So that the record may be clear, would you keep us posted?

Mr. BERRINGTON. Yes, sir.

Mrs. COLLINS. Without objection, it will be included in the record at this point.

[The material follows:]

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
Wage and Hour Division
WASHINGTON, D.C. 20210

DEC 4 1979

Charles Kelso, Esq.
Fisher & Phillips
3500 First National Bank Tower
Atlanta, Georgia 30303

Dear Mr. Kelso:

This is an official reply to your letter of January 4, 1978, which includes twenty-one questions regarding the application of the Farm Labor Contractor Registration Act (FLCRA, copy enclosed). It provides answers to your questions, many of which have previously been answered informally or through Wage-Hour opinion letters available to the general public. It appears to us that many of the questions you pose are hypothetical; they do not to our knowledge describe actual cases.

The Farm Labor Contractor Registration Act requires "any person, who, for a fee, either for himself or on behalf of another person, recruits, solicits, hires, furnishes, or transports migrant workers . . . for agricultural employment" to register as a farm labor contractor. Thus, a "person" must register to engage in farm labor contracting activities, unless one of the specific exemptions listed in Section 3(b) of the Act applies. The term "person" as defined in Section 3(a) of the Act "includes any individual, partnership, association, joint stock company, trust, or corporation." The following numbered answers respond to your questions in the order of your inquiry.

1.(a) "Is the term 'migrant worker' used in FLCRA as the persons to be protected limited in any way by where the worker has 'migrated' or traveled from?"

No. The term "migrant worker" is not limited in any way by where the person has migrated or traveled from nor by whether he or she has migrated at all. The term "migrant worker" must be interpreted in accordance with the definition provided in the Act.

Section 3(g) of the Act (7 U.S.C. 2042(g)) provides:

> The term "migrant worker" means an individual whose primary employment is in agriculture, as defined in Section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)), or who performs agricultural labor, as defined in Section 3121(g) of the Internal Revenue Code of 1954 (26 U.S.C. 3121(g)), on a seasonal or other temporary basis.

Neither migration nor travel is included in the statutory definition. The legislative history of the Act states that the farm laborers included in this definition are "the migrants who travel from state-to-state along fairly established patterns and those who live permanently in the agricultural area where they work." (Emphasis added, S. Rep. No. 93-1295, 93rd Cong. 2nd Sess., at p. 2; H.R. Rep. No. 93-1493, 93rd Cong., 2nd Sess. 6 (1974).)

The Ninth Circuit Court of Appeals found the definition of "migrant worker" to be "obviously a term of art, having no reference to workers with migratory tendencies. Originally defined in the Fair Labor Standards Act, it referred to a class /then/ exempted from the Act's coverage, and its broad definition was supported by the agricultural industry. The apparent intent of the Act herein is to cover those excluded from the Fair Labor Standards Act." (Four cases consolidated for appeal purposes: Marshall v. Coastal Growers Association; Marshall v. Matilija Growers Association; Marshall v. S&F Growers, and El Comite de Campesinos de S P Growers v. S P Growers Association, 598 F.2nd 521, 9th Circuit, 1979.)

In Marshall v. Point Sal Growers and Packers, Ninth Circuit, 1979, 603 F.2d. 224, Point Sal contended "that it does not employ 'migrant workers' within the meaning of the Act because its work force is primarily composed of local area residents who work in the Guadalupe-Santa Maria area, either for Point Sal alone, or for the defendant and other local growers, on a year-round basis." The Court of Appeals rejected that contention and, referring to its decision in Coastal Growers, cited above, reaffirmed that such employees are migrant workers as defined in the Act.

1.(b) "Does FLCRA as amended in 1974 apply to all persons performing the named year-round services for 'all agricultural employees' as defined in the Fair Labor Standards Act, 29 U.S.C. Section 203(f), even though all persons involved are employees of a farmer, live year-round on the farmer's farm, and work solely for that farmer?"

Section 3(b) provides that the Act covers farm labor contracting performed with respect to "migrant workers" (as this term is discussed in answer to 1(a) above) who are to be engaged in or who engage in "agricultural employment" as defined in Section 3(d).

The statutory definitions make it clear that coverage of the Act does not depend upon whether the persons who engage in farm labor contracting perform such services the year round nor upon whether they live on the farmer's farm. Neither year-round employment nor residence on a farmer's farm is specified in Section 3 of the Act as a criterion for exclusion from the application of the Act.

The employment of a full-time or regular employee by a farmer in farm labor contracting activities solely for the farmer may qualify the employee for the exemption provided by Section 3(b)(3) of the Act if the farm labor contracting activities are engaged in by the employee on no more than an incidental basis. The application of this exemption is discussed in some detail in many of the following answers to your questions.

2.(a) "Is the term 'migrant worker' as used in FLCRA to describe the persons to be protected by the Act limited to seasonal or temporary workers?"

No. As discussed in the reply to question 1(a), the term "migrant worker" as used in the Act to describe a person intended to be protected is not limited to seasonal or temporary workers. It clearly protects individuals whose primary employment is in agriculture as well as persons in year-round agricultural employment. (Marshall v. Coastal Growers and Marshall v. Point Sal Growers and Packers, supra.)

2.(b) "Does the phrase 'on a seasonal or other temporary basis' in 7 U.S.C. Section 2042(g) modify and limit the definition of agricultural employees in 29 U.S.C. Section 203(f), or do you interpret said phrase to limit only the definition in 26 U.S.C. Section 3121(g)?"

The phrase "on a seasonal or other temporary basis" refers to agricultural employment as defined in both 29 U.S.C. 203(f) and in 26 U.S.C. 3121(g). Both of these sections of the U.S. Code define agricultural employment for purposes of employment on a seasonal or other temporary basis as well as in connection with primary employment.

The term "primary employment," as used in the definition of "migrant workers," is intended to include any person whose chief, principal, or main occupation is in agriculture. Accordingly, "primary employment" includes employment which is contemplated to continue indefinitely. However, a person is a "migrant worker," regardless of primary employment, if he or she is employed in agriculture on a seasonal or other temporary basis.

3. "As a result of your answers to questions 1 and 2 above, do you conclude that FLCRA requires registration for all farmers' employees who regularly perform the specified activities with respect to all American farm workers?"

Our answers to questions 1 and 2 make it clear that the Farm Labor Contractor Registration Act requires registration and compliance with its provisions by any person defined as a farm labor contractor unless subject to a specific statutory exemption as provided in Sections 3(b)(1) through 3(b)(10).

4. You ask about persons who engage in farm labor contracting activities solely with respect to British West Indian cane cutters who enter the United States under the "H-2" program pursuant to a contract or contracts with the British West Indies Central Labour Organisation.

Section 3(b)(5)(B) provides an exemption from the Act to those persons whose farm labor contracting activities involve only obtaining foreign migrant workers whose employment is subject to written employment contracts that have been executed pursuant to the terms of an "arrangement" with the Government of a foreign nation. The "arrangement" envisaged by section 3(b)(5)(B) clearly contemplates the contract with the British West Indies Central Labor Organisation, an entity established as the agent of the several governments, including, inter alia, Granada; St. Lucia; St. Vincent, and Jamaica. This organization is charged with overseeing the general welfare of the foreign workers in the United States, including the negotiation of employment contracts with growers, as these contracts control the terms and conditions of the employment of the foreign workers. Thus, the enforcement of the employment contracts is the responsibility of the organization as the agent of the several British West Indian Governments. This agency, in turn, will perform its assigned duties through and with the assistance and offices of a United States agency designated for this purpose.

This exemption applies only to those persons whose farm labor contracting activities are concerned exclusively with "obtaining" the foreign workers covered by the "arrangement" and employment contracts made thereunder.

5. You ask about the applicability of section 3(b)(5) to a person who drives a bus daily to transport H-2 cane cutters. That section exempts from the Act a "person who engages in /farm labor contracting/ activities for the purpose of obtaining migrant workers of any foreign nation . . . ." The bus driver is not engaged in "obtaining" these workers; they have been "obtained" prior to this daily transporting. Thus, section 3(b)(5) is not applicable, and such a driver must register unless some other statutory exemption applies.

6(a). This question concerns the applicability of the Act to a year-round tractor driver. A year-round tractor driver transports himself and four other farm employees between home and work each day for about one hour per day on a truck provided by the farmer. This does not appear to be carpooling arranged by the workers themselves, since the farmer's truck is being used. The use of the farmer's truck and/or the pay for driving would constitute a fee for this transporting activity. See 29 CFR 41.5. The driver is engaging in a farm labor contracting activity--transporting--and is covered by the Act. But the driver would be exempt under section 3(b)(3) of the Act if the transporting activity and any other farm labor contractor type activities do not constitute more than an incidental part of his employment.

To be entitled to the exemption provided by section 3(b)(3), a person must (1) be an employee of a farmer or other person referred to in sections 3(b)(1) or 3(b)(2); (2) be a full-time or regular employee of such person; (3) engage in any of the covered farm labor contracting activities referred to in section 3(b) solely for that employer; and (4) participate in such activities "on no more than an incidental basis."

The phrase "on no more than an incidental basis" is not defined by the Act. The legislative history makes it clear that it was the intent of Congress that only those full-time or regular employees who utilize only a limited portion of their time for farm labor contracting activities could qualify for the exemption under section 3(b)(3). As stated on pages 7 and 8 of the Senate Report No. 93-1295: ". . . While employment relationships vary, it is the Committee's intent that foremen and similar bona fide employees will not have to register as farm labor contractors if it can be shown, for example, that they are full-time and permanent employees of an employer who utilizes a limited portion of their time for activities as defined in section 3(b) of the Act."

We have adopted an interpretation that any full-time or regular employee of a farmer, processor, canner, ginner, packing shed operator or nurseryman who does not spend more than 20 percent of the time in farm labor contracting activities is performing on no more than an incidental basis and is exempt from the Act provided such farm labor contracting activities are performed solely for his employer. Accordingly, the tractor driver in this question would qualify for the exemption provided by section 3(b)(3) of the Act if all four of the tests specified in the Act are met and the driving duties of one hour per day do not exceed 20 percent of the time.

6(b). The above principles apply if all five tractor drivers share in the driving. None would need to register where all of the criteria for the exemption are met.

6(c). Where all of the persons qualify for a statutory exemption, the truck need not be registered and insured under the Act.

7(a). Three workers ride in a truck on public roads to pick up a load of tomato stakes at one field and take them to another field ten miles away where they unload the stakes. All three workers then return to the yard for their next assignment, which is to pick up a load of crated vegetables at a field and take it to a packing shed. Again all three workers ride the truck, load it and unload it. Such duties are a regular and continual part of their employment by the farmer; and they perform such duties solely in connection with the farmer's farming operations. You ask whether the truck driver must register himself and the truck.

The answer to this question is based on the principles stated in the answer to question number 6. The workers are being transported from worksite to worksite and thus are being transported for agricultural employment within the meaning of the Act. The driver of the truck would qualify for the exemption provided by section 3(b)(3) of the Act if all four of the tests specified in the Act are met. From the facts you give, it cannot be determined whether his driving duties would exceed 20 percent of the time.

7(b). The above principles apply if the three workers alternate as drivers. Whether they are required to register would be determined by whether the criteria for exemption are met.

8. The driving duties in this question involve two mess hall workers employed by a farmer during the five-month harvest period each year. These workers prepare the noon meal, load it on a truck, get on the truck, drive five miles on a public road to a field where a crew of harvesters are working. After delivering the food, the two workers return to the labor camp and complete their duties in the camp. The driving duties involve one hour each day. You ask whether the drivers and the truck must be registered.

No one is required to register. The requirement under section 3(b) is for transporting migrant workers. We interpret "workers" to mean at least two in addition to the driver.

9. A driver of a tractor which pulls a harvesting machine on which other employees of the farmer work while harvesting the farmer's crops is not "transporting" within the meaning of the FLCRA. Thus, the employee driver need not register.

10. This question concerns driving duties in transporting workers. These driving duties are assigned as necessary to several reliable members of the harvest crew, each of whom drives the farmer's truck which is furnished to the foreman. Each drives for the purpose of transporting workers about once a week or approximately 20 times in each 20-week harvest season.

The answer to this question is based on the principles stated in the answer to question number 6. These drivers would qualify for the exemption provided by section 3(b)(3) of the Act if all four of the specified statutory tests are met. It is not clear that the drivers in question are full-time or regular employees. The driving duties appear to occupy less than 20 percent of the time.

11. This question concerns a farmer's field foreman who is furnished a truck to transport only himself to and from work. The Act does not cover this situation. Since no other employeesof the farmer are transported, the field foreman need not register.

12. A field foreman employed full-time year-round by the farmer hires workers who come individually to the field seeking employment as pickers. These hiring activities involve about 15 minutes each morning. The foreman is paid a salary by the farmer; his primary duties are supervising and coordinating the work. All the workers hired become the employees of the farmer. Neither the foreman nor any other employee of the farmer does any recruiting, soliciting, or transporting of agricultural workers. You ask whether this foreman must register as a farm labor contractor. Senate Report 93-1295, at page 2, discusses the duties of a farm labor contractor: "Although the specific functions of the farm labor contractor, often called a 'crew leader' or 'crew pusher', might vary from job to job, his role essentially remains the same--a bridge between the operator and the worker. In many instances, the contractor is not only the recruiter, hirer, and transporter, but acts as the supervisor, foreman, and paymaster as well. In addition, the contractor frequently controls housing and other vital aspects of the workers' everyday needs."

It is the Department's conclusion that, if a full-time or regular employee of a farmer recruits, hires, solicits, furnishes, or transports migrant workers and spends more than 20 percent of his or her work time in these activities, he or she is performing farm labor contracting activities on more than an incidental basis and is not exempted by Section 3(b)(3). In relation to the employee's farm labor contracting activities, such employee may also engage in supervising migrant workers, acting as their foreman or paymaster, or supervising or controlling their housing. In such cases the time spent engaged in such related duties is counted as farm labor contracting activity in determining whether the 20 percent standard is exceeded.

13. "A farmer is in his field and sees that there are too few harvest workers. He tells his foreman, who is his full-time year-round employee, "Tell the workers to put out the word that we are hiring more pickers." The foreman, pursuant to this instruction, tells the workers, "We need more pickers. Tell your friends we are hiring pickers to join this crew." The pickers pursuant to this instruction do advise their relatives, friends, neighbors of the employment opportunity. As a result of such advice, some of these persons do come to the farmer's employment office the next day and hire on as picker-employees of the farmer. This is a regular and recurring process throughout the year. (a) Must the farmer register? (b) Must the foreman register? (c) Must the pickers who solicited and recruited register?"

We would not assert that the Act applies to the foreman in the situation you describe if all the foreman does is to advise workers on the farm to tell others of job opportunities. Similarly, the farmer is not required to register based solely upon the activities you describe in which the foreman is engaged. Our response does not address the activities of the farmer's employment office since your question does not describe its operation. Also, the pickers would not be required to register as a result of advising their friends and relatives of employment opportunities.

14(a). Engaging in farm labor contracting activities through the State Employment Services is discussed in the attached Opinion Letter WH-487 dated May 18, 1979. In accordance with that letter, the Wage and Hour Division will not impute to the personnel manager the actions of the State Employment Services. Developing lines of communication by placing newspaper and radio help wanted ads, however, does constitute farm labor contracting within the meaning of the Act. Such activities are treated in the attached Wage-Hour Opinion Letter No. 434 dated October 17, 1977. The farmer in your example has a personnel manager whose full-time job and principal duty consists of placing these advertisements and supervising those employees who recruit and hire.

Your letter does not indicate any facts which suggest the application of any statutory exemption. The following registration options apply where there is no statutory exemption. Specifically, a farmer whose activities are covered and not exempt has the following options:

1. The farmer may register as farm labor contractor under Section 4(a) and have each of his or her full-time or regular employees who engage in any farm labor contracting activity register either as a farm labor contractor under Section 4(a) or as the employee of a registered farm labor contractor under Section 4(b), unless otherwise specifically exempt; or

2. Perform his or her farm labor contacting activities only through registered farm labor contractors and their registered full-time or regular employees.

14(b). Jones' work is covered and not subject to any statutory exemption. The registration options which are discussed above are applicable.

14(c). A bus brings some forty workers to a grower's personnel office. The workers go individually to the hiring window, where some of them are hired. The bus then departs, carrying away those who were not hired. At the end of the day, the same bus returns to pick up those workers it had brought who were hired. Although the grower had advertised for workers, it had made no arrangement with any person to bring workers to the farm.

Under these circumstances, there may be a farm labor contractor relationship between the workers and the labor contractor if he is transporting and furnishing them for a fee paid by the workers, regardless of whether a fee is paid by the farmer to the labor contractor. If such a labor contractor were not engaged by the farmer to supply farm labor through an express or implied understanding or contract, there would be no statutory obligation on the farmer under section 4(c) of the Act. If there is a covered farm labor contractor relationship between the workers and the labor contractor and no statutory exemption applies, the contractor would have to comply with all sections of the Act and regulations applicable to the contractor-worker relationship.

If there are circumstances other than those stated in your question which connect the farmer with the operator of the bus, there could be engagement of the services of a farm labor contractor by the farmer. Section 4(c) of the Act, which establishes the obligation of a person to engage only a qualified registered contractor, refers to a person who engages the services of a farm labor contractor to supply farm labor. In no case need the farmer register as a farm labor contractor.

15. You ask us to assume the same facts as in question 14(c) above except that the bus delivering the workers is recognized as the bus of a well-known crew leader.

See our answer under 14(c) above. The facts of any such situation found by the Department will be fully investigated to ascertain whether there are circumstances which connect the farmer with the farm labor contractor.

16. You ask that we assume the same facts as in question 15 above except that the labor contractor is hired by the farmer as a tractor driver.

This is a question of fact which would be fully investigated if found by the Department, as discussed above in replies 14(c) and 15. Since these facts indicate a connection between the farmer and the labor contractor, the Department would necessarily have a duty to explore whether such relationship in fact included the engaging of the services of a farm labor contractor to supply farm laborers within the ambit of section 4(c). Questions 14(c), 15 and 16 appear to explore the limits of section 4(c) of the Act through carefully structured hypotheses and do not relate to any conditions we have found.

17(a). This question concerns the driver of a truck sent by a farmer each day for a four month season to the county seat to pick up workers and return them each evening. The workers are picked up at a well-known gathering place sponsored by the State Employment Services where workers gather to sell their services.

The driver of the truck is engaging in all the named farm labor contracting activities and is covered by the Act. He is exempt, however, if these duties plus any other farm labor contracting activities which he may engage in do not take more than 20 percent of his time. To be entitled to the exemption provided by Section 3(b)(3), the driver must meet all four tests discussed in our reply to question 6. The facts you give do not make it clear whether the driver is a full-time or regular employee of the farmer and whether the driver engages in farm labor contracting solely for that employer. Nor is there any indication as to whether the driver's farm labor contracting activities would constitute less than 20 percent of the time. It appears that the driver also recruits, solicits, hires, transports, and furnishes the workers. In such case if the driver is also their supervisor, foreman or paymaster, the criteria discussed in our answer to question 12 would apply. If the driver is exempt after applying all the statutory tests, then the truck would not have to be insured and registered provided it is for the purpose of supplying workers solely for the farmer's own operations.

17(b). This question concerns whether the insurance requirements of FLCRA apply where there is State workers compensation.

It is necessary to maintain the FLCRA insurance wherever the Act applies. The assumption on which you have based your example cannot be made. The Farm Labor Contractor Automobile Liability Certificate of Insurance certifies that the policy of insurance which has been issued includes a Farm Labor Contractor Liability Endorsement approved by the Department of Labor. Such Endorsement prohibits the application of exclusion (c) to bodily injury sustained by any migrant agricultural worker. In other words, FLCRA prohibits Workers' Compensation from being the exclusive remedy. In the particular situation you cited, Workers' Compensation may or may not provide minimum compensation availability which is at least equal to that provided by FLCRA. Once a Certificate of Registration is issued, the farm labor contractor may operate in any State in accordance with the terms of issuance listed on his certificate. For example, the card will either grant or deny authorization for the holder to transport workers and will restrict such transportation to particular vehicles, which will be listed on the Transportation Authorization Supplement. It does not, however, limit the use of the listed

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vehicles to any given locality. If the Workers' Compensation did meet the minimum limits required, and if the contractor transported workers only when the Workers' Compensation would be applicable, there would still be no guarantee that at any given time he would not receive a job offer which would take him out of the State. Therefore, consistent national standards must be met.

18. Four agricultural workers arrange to come to work each day in the car of one of them. Each of the three passengers pays $2.00 per day for the ride, clearly in excess of a pro rata share of the cost of operating the car. The car's owner has nothing to do with soliciting, recruiting, or hiring his three passengers as employees of the farmer, and neither the farmer nor his agents have anything to do with the transportation arrangement. All four are employed as agricultural tractor drivers by the farmer; all four receive the same wage rate. The Department of Labor does not intend to use its limited Farm Labor Contractor Registration Act resources in investigations of such situations.

19. "The employer recruits agricultural workers through interstate United States Employment Service job orders. Pursuant to agreement with the Department of Labor, the employer will advance a prepaid bus ticket to workers who will come to Florida to cut sugar cane. Four workers arrive at the Nashville, Tennessee Employment Service Office and say they will cut sugar cane. The Employment Service representative, pursuant to the job order, calls the farmer's personnel office to obtain the prepaid bus tickets but also mentions that one of the workers has a car and all four of the workers desire to come to Florida in that car. The Employment Service officer asks whether the farmer will agree to pay the car owner the equivalent of four bus tickets to cover his car expense, payable when the workers arrive at the farm in Florida."

Assuming these to be the facts you ask the following questions:

"(a) If the farmer's personnel representative agrees to this proposal, does the farmer-employer thereby assume any obligation under FLCRA?"

No, the farmer-employer assumes no obligation under FLCRA.

"(b) Does the farmer's personnel representative assume any additional obligation as a result of this transaction?"

No, the farmer's personnel representative does not assume any additional obligation under FLCRA as a result of this transaction.

"(c) Does the car owner-driver have an obligation under FLCRA as a result of this single isolated transaction?"

No, the car owner-driver has no obligation under FLCRA as a result of this single transaction.

"(d) Does the farmer or his personal representative escape an obligation under FLCRA to have the driver and the vehicle registered and properly insured if the personnel representative responds to the Employment Service inquiry, 'Tell the workers we will prepay bus transportation but we will not pay for any other kind of transportation,' but he knows they are driving the car to Florida to accept the jobs in reliance on the ES job order?"

No, based on these facts, there is no obligation on the farmer for the driver or the vehicle to be registered under FLCRA.

20. and 21. You ask about the meaning of Section 3(b)(3) in terms of specific guidelines, including a percentage test, for the application of this provision.

We have answered questions 20 and 21 in the preceding replies, especially, in the answers to questions 6 and 12. As a result of the experience we have gained in the administration of the Act, we have adopted the percentage test discussed in the preceding answers. Our position on the application of Section 3(b)(3) is restated here.

We have adopted the interpretation that any full-time or regular employee of a farmer, processor, canner, ginner, packing shed operator, or nurseryman who does not spend more than 20 percent of his or her work time in farm labor contracting activities is performing such activities on no more than an incidental basis and is exempt.

Farm labor contracting activities are recruiting, soliciting, hiring, furnishing, and transporting migrant workers and may include certain related duties. As part of these farm labor contracting activities, such employees may engage in supervising migrant workers, acting as their foreman or paymaster, or supervising or controlling their housing. In such cases, the time spent in such related duties would be counted as farm labor contracting activity in determining whether the 20 percent standard is exceeded.

Your name has been placed on our mailing list to receive future opinion letters and publications regarding the Farm Labor Contractor Registration Act.

Sincerely,

Signed

C. Lamar Johnson
Deputy Administrator

Enclosures

Mr. BUTLER. Here again, in your response, perhaps the use of the word "regulations" was not altogether accurate, but are you satisfied that you have kept the industry advised of your thinking with reference to the various aspects of this? I think that is basically the problem.

Mr. BERRINGTON. Yes, sir, we have tried.

I think the industry's basic concern—and I hesitate to speak for Mr. Ellsworth—is less with not being kept informed, although there are certainly areas where perhaps we need to do that more, but a basic disagreement over what the law means.

Mr. BUTLER. I suspect that is part of it.

Let us get back to one other question. We talked about consent judgments. It was the complaint of the earlier witnesses that these are not effective. Would you like to comment on that?

Mr. BERRINGTON. I would be glad to let the Associate Solicitor comment on that.

Mr. BUTLER. The question was: How effective are consent judgments as enforcement tools?

Mr. WHITING. Early on, or in 1976 at least, almost the whole thrust of the litigation program was injunctive because, at that time, the civil money penalty system has not been put into place. So, at the moment I have to say that the thrust is certainly going to be on the side of the administrative penalty system because it does seem to be more effective in hitting people in their pocketbook. However, we did get a fair number of consent judgments. When we say consent, of course, that means they were with the Federal district courts.

To the extent that we find followups again, we will start to put more and more emphasis on going with contempt actions.

Of course, one problem with contempt actions is getting service of process. When you have a contempt judgment, say, in South Carolina, and the person is now operating in Maryland, we sometimes have jurisdictional and service problems. But we will give more emphasis to contempt where we have the past injunctions.

Mr. BUTLER. Is that a problem? Do they keep moving around on you?

Mr. WHITING. In many instances, certainly. There is a definite stream that the migrant labor follows from Texas, Florida, California, and so on. Oftentimes, the injunction will be in the one State, and their operation the next time we find them will be in a different State.

Mr. BUTLER. But the injunctions prescribe violations of the act anywhere.

Mr. WHITING. Yes; they do, but there are some legal questions on whether they are districtwide or not.

What I am suggesting, basically, is that the civil money penalty is going to be the more effective thing, and we are going to try to do that on a more mass basis in terms of litigation through decentralization.

Mr. BUTLER. What do you view the role of the Legal Services Corporation to be in this?

Mr. BERRINGTON. The Legal Services Corporation can represent individuals under the private right of action provisions of the act. In addition, we are more than willing or anxious to get information from any source, including the Legal Services Corporation, about any pos-

sible violations of the act, and will proceed with proper enforcement activities once we receive them.

Mr. BUTLER. Thank you.

Thank you, Madam Chairwoman.

Mrs. COLLINS. Mr. Maguire?

Mr. MAGUIRE. Thank you, Madam Chairwoman.

Mr. Berrington, Mr. Carr in his written statement—and he referred to the situation in general terms a few minutes ago—details the circumstances of the Westover labor camp, apparently the largest labor camp operating in that area, in Somerset County, Md.

What can you tell us about the Westover labor camp and what the Department of Labor knows about it and is doing or plans to do about the conditions there?

Mr. BERRINGTON. I did not hear the statement earlier, and I cannot give you a specific answer on that now, but we would be glad to provide for the record that kind of information.

Mr. MAGUIRE. Mr. Carr's testimony indicates that the conditions there have existed for some years. He cites very reliable persons who indicate that the situation is worse now than it was 5 years ago. Apparently there is a history of representation to the Department about the conditions there.

I would appreciate it if you would furnish this subcommittee with a full account of the Westover case from the Department of Labor's point of view.

Mr. BERRINGTON. Yes. We will be happy to do so.

Mrs. COLLINS. Without objection, it will appear in the record at this point.

[The material follows:]

The Wage and Hour Division has conducted numerous investigations over the past years of farm labor contractors who utilize the Westover Labor Camp in eastern Maryland. The Maryland Occupational Safety and Health Administration (MOSHA) operating under a Federal State agreement has inspected the labor camp in prior years. During the 1979 harvest season, it is our understanding that MOSHA issued a citation for labor camp safety and health violations and assessed a civil money penalty against the Somerset Growers Association, Inc., owner of the camp. The penalty has been contested and a hearing will be scheduled.

A recent investigation of the Somerset Growers Association, Inc. by the Wage-Hour Division did not disclose any covered farm labor contracting activities at that time. A reinvestigation will be scheduled at the time the camp is occupied during the 1980 season.

Mr. MAGUIRE. He also talks in his testimony about the case of a crew leader named Wardell Williams who operates out of Florida and refers to the fact that the Florida Rural Legal Services Agency has filed suit against him and has provided the Department of Labor with a great deal of data with respect to possible violations of the criminal provisions of FLCRA and other criminal statutes. Apparently, this is a prime example of a repeat violator.

Mr. BERRINGTON. My understanding is that an investigation is proceeding now.

Mr. MAGUIRE. I would appreciate it if you would also give the subcommittee an account of where the case of Mr. Williams stands as far as the Department is concerned.

Mr. BERRINGTON. I would be glad to do that in outline form. I think, however, it may not be appropriate from a law enforcement standpoint

to provide details. But we would be glad to bring you up to date on that.

Mr. MAGUIRE. I would appreciate whatever you can tell the subcommittee that would be consistent with your pursuit of the legal aspects of the case.

Mrs. COLLINS. Without objection, it will appear in the record at this point.

[The material follows:]

In response to a complaint filed by Florida Rural Legal Services with the Department against Farm Labor Contractor Wardell Williams, an investigation was initiated in North Carolina in the 1979 fall harvest season. Violations of the Farm Labor Contractor Registration Act and the Fair Labor Standards Act were found during the investigation. The file has been reviewed by our staff in Washington and is now being referred to the Regional Solicitor for appropriate legal action. I cannot say precisely what type of legal action will be initiated, but based upon Mr. Williams prior history, I expect that all available legal remedies will be sought.

Mr. MAGUIRE. In the case of Mr. Portalatin, apparently the investigation was supposed to have been closed at the Trenton regional office in mid-August. It is now approaching mid-November. What is the status of this case, particularly with respect to possible proceedings on criminal charges?

Mr. BERRINGTON. The Department has referred the file to the Department of Justice for consideration of possible criminal action. The Department of Labor has also taken administrative action, including a $4,000 civil money penalty assessment, against Mr. Portalatin.

Mr. MAGUIRE. Do you have any comment on the fact that the Baltimore area office of the wage and hour division closed an earlier investigation of Mr. Portalatin's activities by settling for a $60-per-worker repayment by the Leonard Farms Corp. for excess travel deductions but did not do anything more than that with respect to the hours worked or any other conditions?

Mr. BERRINGTON. I would have to look at the particular case file to know whether that type of action at that stage was appropriate.

The Department was investigating Mr. Portalatin's activities as a farm labor contractor, and I want to emphasize that, because most of the difficulties that were described come outside of the Farm Labor Contractor Registration Act. But we have been investigating him; the investigation of Mr. Portalatin began several months before the incident that was described here this morning. We have, from the administrative standpoint, in relation to Mr. Portalatin's activities as a farm labor contractor, brought to fruition that investigation, which includes, as I mentioned, the civil money penalty assessment and our refusal to renew his registration for next year.

Mr. MAGUIRE. Do you sense the frustration that some of us feel and that representatives of the Legal Aid Services feel about this situation? In the aggregate, your numbers are outrageously low as an indication of action under this law, and I think that emerges very clearly.

When specific examples come to the attention of the subcommittee, such as those I have just mentioned, it seems as if nothing ever gets done, and we are talking now about 15 years after the initial passage of this law and 5 years after it was strengthened.

I would like you to comment on the issue of how people who are engaged in trying to protect people's rights under this law must feel. And perhaps you will tell me that you feel the same way; I hope you do.

But listen for a moment to this statement from Mr. Carr which is included in his written testimony:

> I could probably testify for many hours about other serious and repeat violators who have encountered my clients. Briefly, I am constrained to say that they all continue in business and that if my present clients are correct, they continue to engage in the same practices which brought them to my attention in the first instance. Some of these individuals have been subjected to civil money penalties, but I am unaware of any efforts taken by the Department to collect these penalties.

Here is a man who has been working in this field for 4 years; others have been working in this field for much longer, and, as I understand it, can make statements which are pretty much the same about the general situation with respect to enforcement of the law.

What is to be done, Mr. Berrington?

Mr. BERRINGTON. When the chairwoman began the session this morning, she referred to Edward R. Murrow's "Harvest of Shame," I think all of us who are concerned about working conditions for agricultural labor share the frustration that was represented by that statement that those conditions have not improved more since the Murrow program of 1959 or 1960.

Agricultural labor has, historically, not received the same level of protection as other labor in the United States.

Mr. MAGUIRE. Which includes, I assume, a set of priorities within your own Department. Does your statement apply to that?

Mr. BERRINGTON. No. I want to get to that because, while conditions have improved—some statutory improvements have been made in relation to agricultural labor—the only place in the Federal Government where there is any real enforcement authority is in the Labor Department.

I cannot speak for what transpired prior to 2½ years ago, but I know that within the last 2½ years there have been tremendous efforts and a reordering of priorities within the conflicting priorities we have, a reordering of priorities to increase the amount of attention to this area, especially under this law.

Mr. MAGUIRE. OK.

On the top of page 10, you make two statements. You say, "Top priority is given to identifying and investigating contractors who have repeated serious violations of the act." Yet, we have data which says that of 5,708 compliance actions only 276 were followup investigations.

Mr. BERRINGTON. That is a misreading of the data.

Mr. MAGUIRE. It is a misreading of the data. How should they be read?

Mr. BERRINGTON. That terminology for followup investigations merely refers to going back to a particular farm labor contractor within 12 months of a particular investigation. It has nothing to do with followup actions on a farm labor contractor in subsequent years or subsequent harvest seasons.

I apologize if the terminology which we use, and which we understand for our computer printout information, was inadequately conveyed. We do have a substantial followup in this area.

Mr. MAGUIRE. But you do indicate that your statistical system is not set up to collect data by repeat violators.

Mr. BERRINGTON. That is correct, but we do have a system which is set up to collect data on violators which is then printed out each month and which is available to each compliance officer to utilize when the compliance officer is in the field.

By comparing the information that the compliance officer finds in the field with the information on this monthly tracer listing, assistance can be provided for followup activity.

Mr. MAGUIRE. If the percentage of repeat violators is in the range of, I think you mentioned, 65 percent in your statement—and other estimates go as high as 75 percent—that says it all, does it not? We are not reaching the people who need to be reached to make sure that the law is applied.

Mr. BERRINGTON. I think the farm labor contractor community—and I use that in the broad sense, which includes farmers who employ agricultural labor—does not yet believe that this law is for real.

Mr. MAGUIRE. That is a very interesting statement.

Mrs. COLLINS. Yes. Why do they not believe it?

Mr. BERRINGTON. Because of the nature of the business, where they can move around easily, be easily undetected.

Mrs. COLLINS. Is not the reason they do not take it serious that the enforcement on the part of the Department has been so lax?

Mr. BERRINGTON. We are talking about stepped up enforcement over the last 2½ years. What that really means is the last two and a half growing seasons. It will take efforts over a longer period of time than that to make the law a reality, quite frankly, for many of these employers. It will also take time for the litigation process to have enough hard decisions through the courts to get the kind of compliance that we all want to see.

Mr. MAGUIRE. Are you telling the subcommittee that the very low level of denials of registration, revocations of licenses, and so on, which has been characteristic of the Department's enforcement activities to date, are going to increase now as a result of your enhanced enforcement efforts, and the number of referrals to administrative law judges, and the number of criminal prosecutions, and so on, will increase in the future?

Mr. BERRINGTON. I know that the number of referrals to administrative law judges is going to go up substantially and it has recently.

Mrs. COLLINS. Would the gentleman yield on that point?

Mr. MAGUIRE. Surely.

Mrs. COLLINS. I am glad you say that number is going to increase, but I am concerned because it is my understanding—and correct me if I am wrong—Mr. Whiting, that there is already a backlog, and that after these cases have been sitting around for a year or so, somebody just throws them out anyway. So, I applaud your effort, but I want to know what is going to happen.

Mr. WHITING. They will not be thrown out. They will be carefully analyzed, and if there is supporting evidence they will go forward.

We do have a substantial backlog, and, as I said, we are in the process of decentralizing. As I pointed, we are kind of at the end of the pipeline. A lot of our backlog hit in late 1978 and in 1979, so those cases, from a legal standpoint, are still relatively recent.

Mrs. COLLINS. How long do you keep a case considered to be relatively recent, and when do you kick it out?

Mr. WHITING. We do not have any kind of guideline on where the case dies. After a certain period of time——

Mrs. COLLINS. They just automaticaly die?

Mr. WHITING. No; it depends on the strength of the evidence, and so forth.

As I indicated, we now have about 275 filed cases, and with the decentralization to the 15 regional offices, we would certainly anticipate that both the speed of handling and the number of cases handled would increase markedly within the next 6 months.

Mrs. COLLINS. The gentleman has the time—

Mr. MAGUIRE. Madam Chairwoman, I think your line of questioning is excellent.

Mrs. COLLINS. Then just let me ask one more question.

Why is it better for the Government to drop valid cases against abusers because they have been on appeal for over a year? That is my understanding of what happens.

Mr. WHITING. I do not know of any cases that have been dropped just because of that. If there were evidence problems, that would be one thing. But we do not have any cutoff or guideline on that.

Mrs. COLLINS. Thank you.

I would return the time to the gentleman.

Mr. MAGUIRE. Thank you, Madam Chairwoman.

How many people in the Solicitor's Office are full time working on the FLCA cases?

Mr. WHITING. That has been one of the problems, and that is why we are going to decentralization. In fiscal year 1977–78, we had four and a half attorneys. In fiscal year 1978–79, we had five and a half.

Mr. MAGUIRE. Full time?

Mr. WHITING. Yes. But that includes supervisory time, and defensive actions, and appeal actions. We would guess that appeal actions probably take 30 percent of that time. It has become apparent that, given the resources we have available in Washington, we cannot handle this kind of work.

Mr. MAGUIRE. The subcommittee was reliably informed that there was only one person working on new FLCRA cases in the Solicitor's Office. Is that not the case?

Mr. WHITING. Not that I know of. I have no idea who so informed you. But, as I indicated, the workload statistics of my office have indicated that we have utilized about 4½ years of attorneys' time in the past. That has increased to 5½ in the past year, primarily due to some defensive lawsuits. But, as I said, you have to remember that that includes opinion work, appeal work, and all other kinds of work. We admit that is not adequate; that is why we are in the process of decentralizing.

Mr. MAGUIRE. The second thing I wanted to raise from the top of page 10, Mr. Berrington, was the statement:

> A system has been established for inter- and intraregional coordination for the situations where a contractor found to be in violation is moving into another geographic area and a followup investigation is indicated.

On page 9 of Mr. Read's testimony, he makes the following statement:

We discovered that the U.S. Department of Labor's fragmentation into different regions of area offices made effective coordination of an investigation crossing different regional and area boundaries impossible.

That is recent—that is this year—with respect to the *Portalatin* case.

What comment do you have on that juxtaposition of assertions?

Mr. BERRINGTON. The Department's actions to gain coordination of the program and to develop a tracer list which can be utilized from one region to another have been recently implemented, within the last year and a half.

Mr. MAGUIRE. Presumably these were in effect, then, during the period of time which Mr. Read was talking about with respect to the Portalatin matter.

Mr. BERRINGTON. I would not want to speak for him. There are problems in tracing farm labor contractors who go from one State to another, often on vehicles that are not even licensed, and who have arrangements with farmers where it is to the benefit of both the contractor and the farmer not to report the presence of the farm labor contractor. Where it is very difficult to trace these matters, interregional coordination is not an easy matter. It is a very, very difficult matter. We will pursue any lead which any legal corporation will provide us for dealing with these farm labor contractors that we are not aware of in a particular location if they have information about them.

Mr. MAGUIRE. How do you account for the fact that the U.S. Department of Labor office in Puerto Rico did not involve itself in the followup with respect to the Portalatin matter? Or did they?

Mr. BERRINGTON. I do not know the facts of that.

Mr. MAGUIRE. Perhaps you could include something about that in your report to the subcommittee—on the Portalatin matter.

Mr. BERRINGTON. I would be glad to.

[The material follows:]

The Wage-Hour offices in Puerto Rico did not participate in the *Marcos Portalatin* case. Investigations were conducted in Delaware and New Jersey. When Portalatin fled New Jersey for Puerto Rico after the stabbing incident, he was a fugitive sought by the Federal Bureau of Investigation.

Mr. MAGUIRE. Is it true that, prior to 1979, there have been only 18 cases involving criminal penalties that have been closed, and that most of these resulted in a suspended $250 fine, and that there was only one case where an individual was actually convicted to a jail term for violation of FLCRA? Are those facts roughly correct?

Mr. WHITING. Prior to this year, we do not have the latest update, but the statistics you quoted prior to this year were for 18 referred to U.S. attorneys. Those are referred directly from our regional offices to the various U.S. attorneys. There were seven indictments and convictions. I do not have a rundown of what the penalties imposed there were. Two were indicted in cases dismissed; there is one pending indictment; and there are seven submitted with no action in the U.S. attorney's office, one submitted that was rejected by the U.S. attorney. But I do not have the latest statistics.

Mr. MAGUIRE. I am always astonished, Madam Chairwoman, at the number of times we have an agency testify before the subcommittee or

other subcommittees, telling us that they are just about to get on with the job of administering the law.

I thank you very much.

Mrs. COLLINS. Thank you, very much.

Our time has just about run out. Let me ask just one other question.

On page 13 of your testimony, Mr. Berrington, you say that you—the Department of Labor—intend to increase the wage and hour enforcement efforts to let farm labor contractors know that if they violate the act, there will be a very strong possibility that those violations will be uncovered, and they will be subjected to the penalty provisions of the act.

I would like to know when this will be an accurate statement; I do not think it is accurate right now.

Mr. BERRINGTON. I think, to an increasing extent, it is accurate.

Mrs. COLLINS. Why? How can you say that?

Mr. BERRINGTON. And I would like to respond to Congressman Maguire on that, as well. You started out by asking, why do we do some of the heavy activity in registration? One of the reasons that we do heavy registration activity is to let the farm labor contractors know that we are there, that there is a law to enforce, and that their presence is known. It is not that the Employment Standards Administration or the Labor Department is about to increase enforcement under this act.

We have had a 66-percent increase in enforcement actions from 1978 to 1979. We have increased the budget for this activity by 60 to 70 percent over the last year, and we are increasing the amounts of civil money penalty assessments to the Department.

We have much to do, and I would be the last one to tell you that we do not. But it is not a matter of us starting at some time in the future; it is part of the process of having moved this program up much higher in the priority list than it had been in the past and getting it moving. I think the data and the statistics show it, and I think the fact that some farm organizations are so concerned about our activities show it as well.

Mrs. COLLINS. Let me say that I appreciate the statistics which you have just given us. I also appreciate the fact that these civil money penalties have been going on for 5 years and that we do not have what I consider to be a serious decrease in the amount of abusive activity.

Mr. MAGUIRE. Madam Chairwoman.

Mrs. COLLINS. Yes?

Mr. MAGUIRE. Excuse me. I think one other figure is extremely important here. That is, budget positions were increased from 28 to 58 for compliance officers from fiscal 1978 to fiscal 1979. In fiscal 1979, according to the data that DOL has given us, there was a planned enforcement of the staff year level of 46.2. The actual enforcement of the staff year was 21.1. In 1978, it was higher than that; it was 30. So, in 1979, while we are going forward with this wonderful increase in the Department of Labor's activities with respect to implementing this law, we are nine enforcement staff years down from where we were in the previous year, and just over a third of the budget provisions that have been provided.

My understanding from staff is that for fiscal 1980, against those 58 budgeted positions, we are going to have something around 30 or

31. I wonder if it would not be useful to get a comment on that point from the witnesses?

Mrs. COLLINS. Mr. Berrington?

Mr. BERRINGTON. Yes. We did not hit our goal last year for the amount of staff years.

Mr. MAGUIRE. You did not anywhere near hit it.

Mrs. COLLINS. Why did you not hit it?

Mr. MAGUIRE. You were a half down from your goal. How can you explain that, given what you are telling the subcommittee today that your intentions are?

Mr. BERRINGTON. The number of investigations that were done with the staff years that were devoted went up very substantially. We have looked at the allocations of staff from region to region; we have made some reallocations within regions to get more of the compliance activities, more of the man years in agricultural areas where it is needed. We are going to try to get that figure up, close to the goal.

Mr. MAGUIRE. Why is your goal 12 positions below what the Congress has provided?

Mr. BERRINGTON. I do not believe that is correct.

Mr. MAGUIRE. That is what you have given us.

Mr. BERRINGTON. No, the budgeted positions are different from the enforcement staff years. I have some experts who can explain that.

Mr. MAGUIRE. All right. I accept that. Give it to us in the small print.

Mrs. COLLINS. Without objection, that will be included in the record at this point.

[The material follows:]

In FY 1979 the 58 budgeted positions represented the total available compliance officer positions. After deducting time for annual leave, sick leave, training, travel and other administrative activities, the 58 budgeted postions were converted to 46 planned enforcement staff years. Thirty-two staff years were actually expended in FLCRA enforcement. Thus, we actually achieved almost 70 percent of the plan in terms of staff years expended. However, as I previously indicated, the number of investigations conducted actually increased each year since the Act was amended in 1974.

Mr. MAGUIRE. When are you going to reach the planned enforcement level? You are not going to reach it in 1980—right? When are you going to reach it?

Mr. BERRINGTON. I think we will reach it in 1980.

Mr. MAGUIRE. During this fiscal year?

Mr. BERRINGTON. Yes, sir.

Mr. MAGUIRE. You will be at 46.2 planned enforcement staff years?

Mr. BERRINGTON. Yes, sir.

Mr. MAGUIRE. That is encouraging.

Mrs. COLLINS. We will see.

[Correspondence relative to the above paragraphs follow:]

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY FOR EMPLOYMENT STANDARDS
WASHINGTON, D.C. 20210

JUN 30 1980

Mr. Richard E. Grawey
Counsel
Manpower and Housing Subcommittee
Committee on Government Operations
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Grawey:

Thank you for your recent letter requesting information concerning matters related to my November 13, 1979, testimony on Employment Standards Administration's enforcement of the Farm Labor Contractor Registration Act (FLCRA).

As indicated in your letter, during my appearance before the Subcommittee there was a discussion about the disparity between planned and actual enforcement staff years under the FLCRA. You now ask for that data for the first half of Fiscal Year 1980. Planned enforcement staff years for this period were 17.7. Actual enforcement staff years were 12.8. The temporary fall back from planned enforcement staff-years was due primarily to efforts to complete the noncompliance survey designed to measure the level of compliance with the Fair Labor Standards Act. The survey was conducted by the Wage-Hour compliance staff for the Minimum Wage Study Commission. As the noncompliance survey was being completed, we redirected the field enforcement staff reemphasizing that they must now work on meeting our FLCRA objectives for Fiscal Year 1980. Accordingly, we moved closer to meeting the plan in the second quarter of the fiscal year. This activity is now being closely directed and monitored.

We have implemented the settlement order in NAACP v. Marshall. (Two copies of that order are enclosed per your request.) To comply with the order we published final regulations on June 10, 1980. Copies of the final regulations are enclosed.

The Wage and Hour Division has also prepared instructions for implementation of an action log system in each of its area offices. The log procedures have been coordinated with OSHA and ETA to insure that all the required data will be maintained and exchanged as required by the regulations. The Employment Standards Administration has identified the 23 locations for farm labor specialists and 20 have been selected--the number specified in the agreement. The statistical system required for compliance with the regulation has been implemented and the Regional Farm Labor Coordinated Enforcement Committees have been established and are functioning in all 10 Department of Labor regions.

I believe that with the farm labor specialists on board, the implementation of the regulations, and most importantly, the completion of the FLSA non-compliance survey, the level of enforcement activity will increase under FLCRA during the second half of the fiscal year. If I can be of further assistance, please do not hesitate to contact me.

Sincerely,

Craig A. Berrington
Deputy Assistant Secretary

Enclosures

Mr. Whiting and Mr. Williams, it may be necessary, after further reading of your testimony, to ask you to come back again. I am sorry that I did not get a chance to get into some questions today about this housing. I wanted to raise some questions about whether OSHA—and I am sure it is—is aware of housing that looks like this.

[Shows photographs.]

Mrs. COLLINS. This picture is one of two outhouses. The second picture is of another. I understand that the bucket in this second picture is the receptacle that is used for the elimination of body wastes. I certainly have some questions to ask about that, but unfortunately the time for our hearing has drawn to an end.

Just let me say, in closing, that it appears that the enforcement of the Farm Labor Contractor Registration Act has been a low priority in the Department of Labor. I think this is reflected in the number of persons assigned to investigate, enforce, levy penalties, and try the cases. In fact, the act has become, or at least is right now, a toothless tiger. The Department apparently does not know where all the labor camps are located nor which crewleaders are operating in what areas. Repeat violators continue to recruit, hire, and transport migrant workers. Civil money penalties are assessed, but I do not think they are ever collected. Appeals are requested by violators, but the appeals are never heard, leaving the violator to again recruit and to continue to violate the law.

I hope that the next time you are here this will not be the report that we hear. We are going to look at the further information you are going to send us and prepare our report from that information. I do hope, however, that when these hearings continue, we will have a lot better information when you come before us again.

Thank you very much. This hearing is adjourned.

[Messrs. Berrington's, Whiting's, and Williams' prepared statements follow:]

STATEMENT OF CRAIG BERRINGTON
DEPUTY ASSISTANT SECRETARY OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
U.S. DEPARTMENT OF LABOR
BEFORE THE
SUBCOMMITTEE ON MANPOWER AND HOUSING
COMMITTEE ON GOVERNMENT OPERATIONS
U.S. HOUSE OF REPRESENTATIVES

November 13, 1979

Madam Chairwoman and Members of the Subcommittee:

Thank you for the opportunity to appear before your Subcommittee today to discuss the Department of Labor's administration and enforcement of programs relating to farmworkers. I am accompanied here today by David Williams, Administrator of the United States Employment Service (USES) of the Employment and Training Administration (ETA) and Basil Whiting, Deputy Assistant Secretary of the Occupational Safety and Health Administration (OSHA).

First, I want to state that in the past two and one-half years, this Administration has given high-priority to improving the working conditions of the Nation's farmworkers. This has been part of the overall policy to strengthen the economy and improve living conditions for people in rural areas. We have

taken steps to improve the delivery of services, benefits, and protections to which farmworkers are entitled under the various laws administered by the Department of Labor. My Associates and I will be discussing the actions we have taken in this regard.

I wish to give your Subcommittee a brief overview of Department of Labor programs affecting migrant and seasonal farmworkers. The Employment Standards Administration (ESA) is responsible for administration and enforcement of the Farm Labor Contractor Registration Act (FLCRA). The FLCRA is designed to protect agricultural workers in their relationships with farm labor contractors. The Occupational Safety and Health Administration is responsible for administration and enforcement of the Occupational Safety and Health Act, which establishes standards for safe and healthful employment conditions, including those for farmworkers. The Employment and Training Administration administers the Wagner-Peyser Act which establishes the Federal-State Employment Service system.

The Department recognizes the importance of coordination among the agencies with responsibilities relating to farmworkers if it is to effectively deliver services and benefits to these workers. Task forces have been established to deal with specific problems relating to coordination of matters which cut across agency lines. Housing inspection, which has been a major focus of these efforts, is a good example.

Three agencies in the Department have responsibilities for inspecting farmworkers' housing. As a condition for accepting interstate clearance orders for recruitment of workers, the Employment and Training Administration conducts preoccupancy inspections of temporary farmworker housing as part of its Job Service functions under the Wagner-Peyser Act. The Occupational Safety and Health Administration has primary jurisdiction to inspect and enforce the migrant housing standards in occupied temporary labor camps or camps which will imminently be occupied; and the Employment Standards Administration has an ancillary responsibility under FLCRA to inspect and enforce migrant housing standards in camps owned or controlled by farm labor contractors.

Recently the three agencies completed an agreement on coordination of housing inspections. The purpose of this agreement is to maximize the use of Department of Labor resources, expand Department of Labor ability to enforce applicable regulations of migrant housing facilities, and avoid unnecessary duplication. Standardization has also been one of our goals relating to the health and safety guidelines for migrant housing. The agreement includes provision for coordinated targeting of housing inspections, for sharing housing inspection information among the component agencies, and for referral of unsafe housing situations to the agency that can best handle the enforcement in accordance with its jurisdiction over such housing.

The housing coordination agreement serves as a major accomplishment that has grown out of the experience of the Department's regional coordination activities. In June 1977 the Employment Standards Administration was designated as the lead agency for coordinating the Department's field activities relating to migrant and seasonal farmworkers. This coordination has included the establishment of regional coordinating committees in the 10 Department regions made up of representatives of the Departmental component agencies and

chaired by the Regional Administrators for ESA. These committees plan regional coordination strategies and deal with issues and problems relating to migrant programs of the agencies as they arise.

The migrant field coordination strategy also includes steps to seek the involvement of, and to work with, other governmental and nongovernmental groups interested in migrant farmworkers. This has included encouraging other Federal agencies, State Labor Departments and State Employment Service agencies, and representatives of migrants, e.g. CETA 303 grantees and other representatives, to participate in regional coordination committee meetings. Steps have also been taken to encourage other governmental agencies to participate in meetings with migrant workers and/or their representatives to discuss and explain programs dealing with migrant worker issues and concerns. Other examples of interaction with Federal agencies have included such things as Departmental cooperation with the Environmental Protection Agency in designing studies on pesticides and cooperative efforts between the Department and the Immigration and Naturalization Service in enforcing the undocumented worker provision of the FLCPA.

On the State level, examples of interaction include agreements between the Department and the States of New Jersey and Florida providing for State assistance to the Department in registering farm labor contractors under FLCRA. Also, a joint project was undertaken between the State of New York and the Employment Standards Administration to identify gaps in protections provided under Federal and State laws for migrant farmworkers.

I would now like to focus on the role of the Employment Standards Administration in protecting farmworkers under FLCRA. My colleagues, Mr. Whiting and Mr. Williams, will then discuss the administration of the Occupational Safety and Health Act and the Wagner-Peyser Act in that order.

The Farm Labor Contractor Registration Act is a vital protective law for farmworkers. Much of the labor which goes into agricultural production in this country is supplied through a farm labor contracting system in which a farm labor contractor acts as a bridge in recruiting and supplying farmworkers to farm operators. The FLCRA was enacted to protect migrant farmworkers against abuses and exploitation under this

system and it was amended in 1974 to expand coverage to additional workers not previously covered by the Act's protection, to increase the protections for migrant farmworkers under the Act, and to provide enhanced mechanisms for enforcing the Act.

In order to protect migrants and improve their conditions, the FLCRA requires farm labor contractors to register with the Department of Labor and to observe certain rules in dealing with migrant farmworkers. The Act requires, among other things, that contractors have liability insurance on the vehicles they use to transport migrant workers, that they inform workers as to the wages to be paid and other working conditions, and that housing and vehicles for migrants meet Federal and State safety and health standards. With the enactment of the 1974 amendments, the Department has available an assortment of remedies for enforcing the Act, including criminal prosecution, civil injunctive action, and assesment of civil money penalties of up to $1,000 for each violation.

The Employment Standards Administration's Wage and Hour Division has the day-to-day responsibility for the administration and enforcement of FLCRA. The Wage and Hour Division first assumed responsibility for the Act in late 1972 with the transfer of these administrative and enforcement responsibilities to it from the Department's Manpower Administration (now the Employment and Training Administration). One of the reasons for the transfer was to take advantage of Wage-Hour's nationwide investigatory staff.

The Employment Standards Administration is committed to assuring that the FLCRA's protections for migrant farmworkers are implemented in the strongest and most effective manner possible. We believe this commitment has been demonstrated by the progress which we have made.

An essential first step for ensuring that migrant farmworkers are receiving the protections to which they are entitled under the Act is to make sure that all farm labor contractors register with the Department. There has been a continual increase in the number of contractors registered under the Act. During calendar

year 1972, there were 1,372 registrants--1,211 farm labor contractors were registered and identification cards were issued to 161 full-time or regular employees who perform farm labor contracting activities on behalf of a registered contractor. In calendar year 1978, we registered 8,040 farm labor contractors and issued identification cards to 9,118 full-time or regular employees, for a total of 16,158 registrants. Through September 30 of this year, we had registered 8,739 farm labor contractors and issued identification cards to 7,931 full-time or regular employees, for a total of 16,670. Experience indicates that the most effective method for assuring compliance with the Act is through a strong enforcement program. A comprehensive enforcement strategy has been developed to achieve widespread compliance with the Act. The emphasis of this activity centers on certain vital areas--which lead, with proper implementation, to a strong visible enforcement program. There is a concentration on repeat serious violators and, in conjunction, an emphasis that investigations be developed for criminal litigation.

Top priority is given to identifying and investigating contractors who have repeated serious violations of the Act. A system has been established for inter- and intra-regional coordination for the situations where a contractor found to be in violation is moving into another geographic area and a followup investigation is indicated. In this connection an automated tracer listing is used to track investigation histories of repeat violators. Thus, our compliance officers encountering a serious violation in some other region know the record of that contractor. Of the approximately 2300 farm labor contractor employees who were investigated and found to be in violation in fiscal year 1979, we have identified the 300 most serious repeat violators.

In carrying out our enforcement activities, we use integrated investigations covering the contractor, the employee(s) and the user of the contractor's services to provide the most effective use of time and to achieve a greater level of compliance. Where there is also coverage under the Fair Labor Standards Act, the status of compliance with that Act, which currently requires that covered farmworkers be paid a minimum wage of $2.90 an hour, is determined during the visit undertaken for the FLCRA investigations.

The enforcement statistics bear out the progress which has been made under our comprehensive enforcement approach. We have steadily increased the number of compliance investigations under the Act. In fiscal year 1975, less than 1,000 investigations involving farm labor contractors and related problems were conducted. By fiscal year 1979 we conducted 5,708 compliance investigations. Over this period of time, we have also seen a drop in the percentage of compliance investigations which uncover violations. In fiscal year 1975, 86 percent of the investigations uncovered violations. This percentage dropped to around 70 percent in fiscal years 1976 through 1978 and to 53 percent in fiscal year 1979. However, a more realistic violation rate for 1979 is obtained by noting that 66 percent of all covered activities were found to be in violation.

In order to ensure compliance with the Act, we have been seeking the multiple remedies it provides. Assessments of civil money penalties since January 1977, when the first penalties were levied, now total more than $3.7 million. Through September 30 of this year, $350,613 in civil money payments had been received.

We have also not hesitated to take administrative action to deny certification to farm labor contractors because of violations of the Act. The Secretary has issued final orders in 323 administrative actions involving revocations, refusals to issue or renew, and suspensions of registration certificates from 1975 through September 30, 1979 of this year. The majority of the administrative orders--251--have been issued since the beginning of 1977.

The Wage and Hour Division has conducted housing safety and health investigations in situations where farm labor contractors are found to own or control labor camps. In fiscal year 1979, 706 housing safety and health inspections were conducted, and we expect to increase that effort during the current year.

There are some coordination activities which relate to our enforcement functions involving housing. In instances where Departmental investigations of farm labor contractor housing lead to closing down of the housing and a resultant displacement of farmworkers, we refer the farmworkers to the Employment and Training Administration which refers the matter to the appropriate CETA 303 grantee. The CETA 303 grantee provides appropriate emergency assistance to the farmworkers.

Also, under the Department's coordinated housing inspection program, all of Wage-Hour's approximately 1,000 compliance officers have received housing safety and health training under a training package which was prepared in cooperation with OSHA.

The Department believes that the law includes adequate enforcement remedies to ensure that migrants receive the protections to which they are entitled under the Act. We intend to increase the Wage-Hour enforcement efforts to let farm labor contractors know that if they violate the act, there is a very strong possibility that those violations will be uncovered and they will be subjected to the penalty provisions of the Act. The 66 percent violation rate for investigations covered under the Act can never be acceptable. It is only indicative of how much remains to be done in securing compliance. We are determined to see that the promise this law holds for migrant farmworkers becomes a reality.

This concludes my part of the Department's testimony. Attached to our testimony is a listing, as requested, which describes litigation currently pending against the Department by repersentatives of employee groups. I will be happy to answer any question you or the Subcommittee members may have about the administration of FLCRA after my Associates' remarks.

STATEMENT OF BASIL WHITING
DEPUTY ASSISTANT SECRETARY
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
U.S. DEPARTMENT OF LABOR
BEFORE THE
SUBCOMMITTEE ON MANPOWER AND HOUSING
COMMITTEE ON GOVERNMENT OPERATIONS
U.S. HOUSE OF REPRESENTATIVES

November 13, 1979

Madam Chairwoman and Members of the Committee:

I appreciate this opportunity to discuss the Occupational Safety and Health Administration's (OSHA) enforcement of standards affecting migrant farmworkers. In your letter of invitation, you identified specific areas of concern to the Committee. My testimony today will, in accord with your request, address the questions posed in your letter to the extent they relate to OSHA's responsibilities.

With respect to migrant-related enforcement activities, OSHA's primary emphasis in protecting migrant farmworkers is focused on application of its migrant housing standard, (29 CFR 1910.142). This standard, adopted in 1971, applies to all temporary labor camps provided to workers as a benefit to their employer.

OSHA took steps to enforce its authority in such facilities. Economic necessity often dictates that migrant workers live in employer-provided housing, under conditions over which they have little or no control. Thus such housing is clearly a working condition.

OSHA enforces its migrant housing standard in those States and territories where OSHA has not delegated its safety and health enforcement authority to the States. In addition, the 24 OSHA designees in States where authority has been delegated also enforce either similar or identical migrant housing standards.

In fiscal year 1979, OSHA's Federal migrant housing inspection goal was set at 1,000 inspections. For the first time, the Agency not only met but surpassed its goal, with the initiation of 1,171 inspections in these facilities. This activity resulted in citations for a total of 1,239 violations. Of these, 52 were classified as serious violations, that is, likely to cause death or serious physical harm. Of

the remainder 1,150 were cited as "other than serious," and 37 as repeated violations. Federal penalties for the year totaled $19,300. In the 24 States that conduct funded safety and health programs, 764 housing inspections were conducted, discovering a total of 1,096 violations.

OSHA's jurisdiction over migrant housing facilities for purposes of safety and health enforcement is the broadest within the Department of Labor. Unlike the Employment Standards Administration (ESA) which enforces the Farm Labor Contractor Registration Act, we are not limited to enforcing housing standards in only those camps owned or controlled by farm labor contractors. Under its mandate, OSHA inspects all migrant housing provided as a benefit to the employer, regardless of size or source of ownership or control.

In an effort to enhance the effectiveness of its program, we have, during the past three years, awarded contracts to States under Federal OSHA jurisdiction. Under these agreements, State personnel are trained and deputized as Federal compliance officers to conduct migrant housing inspections. During fiscal year 1979,

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the States of New Jersey, Wisconsin and Ohio were awarded such contracts and produced a total of 631 migrant housing inspections. This effort significantly enhances OSHA's ability to inspect more migrant labor camps.

In addition to contracts, two years ago OSHA adopted a "New Directions" program for the purpose of developing the internal capability of labor, employers, and other educational organizations to provide continuing occupational safety and health services to workers and employers. In connection with this program, OSHA has awarded the National Association of Farmworker Organizations (NAFO) grants totalling $185,000 to develop and implement a hazard recognition and control program for migrant farmworkers. It is hoped that the NAFO grant will result in both sensitizing farmworkers to the existence of hazardous housing conditions as well as encouraging them to alert OSHA regarding such hazards, so that appropriate action may be taken.

Having resolved the issue of dual standards enforcement, the Department has proceeded over the past year to improve coordination between its agencies with migrant related responsibilities. As discussed by Mr. Berrington,

OSHA, ESA and the Employment and Training Administration (ETA) have recently negotiated an agreement for an interagency coordinated inspection program. Designed to reduce duplication of effort, this agreement provides that OSHA will concentrate its housing inspections only in those camps not previously inspected by either State Employment Security personnel or by Wage-Hour compliance staff enforcing FLCRA.

Moving on to the matter of dual housing standards, the number of separate regulations of the Department, affecting migrant housing facilities, was of considerable concern to us. In an effort to resolve the problem, the Department adopted a policy which we feel will clarify legal obligations of the employer and at the same time will not unnecessarily disrupt existing housing arrangements.

Under this proposed policy, all housing constructed prior to the date of publication is subject to either the ETA standard or the OSHA standard. Compliance with either is deemed to be compliance with the other. The choice of which standard to comply with is left to the discretion of the owner or controlling operator.

Migrant housing constructed on or after the date of final publication will be subject exclusively to the somewhat stricter OSHA housing standard. Representatives of both affected employee and employer groups were consulted prior to the adoption of this policy and both groups indicated general agreement with such a procedure.

Besides its obvious intrinsic benefits, the development of this coordination program has had the added value of establishing an effective working relationship between the parties to the agreement. We applaud this result and look forward to continuing our work with ETA and ESA at the national office to further improve coordination within the Department. We also fully support the efforts of the Regional Coordinating Committees and will continue our active participation in the activities of these groups in the 10 Federal regions.

In conclusion, we would like to state that we are most pleased by the gains made by OSHA and the Department on behalf of migrant workers over the past year. However, we also recognize that much remains to be done to bring the working conditions of the migrant

population up to par with those of other U.S. workers. OSHA is committed to this effort and will continue to work with its partners in the Department to achieve the desired objective.

Madam Chairwoman, this concludes my prepared statement. After my Associates' remarks, I would be pleased to answer any questions that you may have regarding the administration of OSHA.

STATEMENT OF DAVID O. WILLIAMS
ADMINISTRATOR
UNITED STATES EMPLOYMENT SERVICE
U.S. DEPARTMENT OF LABOR
BEFORE THE
SUBCOMMITTEE ON MANPOWER AND HOUSING
COMMITTEE ON GOVERNMENT OPERATIONS
U.S. HOUSE OF REPRESENTATIVES

November 13, 1979

Madam Chairwoman and Members of the Subcommittee:

I am pleased to have this opportunity to appear before you today to discuss programs and services for migrant and seasonal farmworkers that are administered by the United States Employment Service (USES), principally under the authority of the Wagner-Peyser Act.

The USES, through a network of State Job Service (JS) agencies and their local offices, provides labor exchange services to match employer needs for workers with qualified job applicants. All applicants and employers are eligible for services which include, in the case of applicants:

- registration and assessment,
- counseling,
- testing,
- referral to supportive services and training,

- referral to supportive services and training,
- job development, and
- referral to agricultural and nonagricultural jobs.

For employers, services available include:

- listing job openings,
- testing workers,
- screening and referring workers to jobs,
- special recruitment efforts including interstate recruitment,
- provision of labor market information, and
- employer technical services

These services are provided, on a no-fee basis, through approximately 2,600 local offices across the country.

In fiscal year 1979, the USES operated with a budget of approximately $720 million for the delivery of basic labor exchange services which provided for 30,000 staff positions to deliver these services.

Data on JS services provided for fiscal year 1979, which ended in September 1979, will be available by the end of the month. We would be pleased to provide

this to the Committee when it is available. In order to provide you with an overview of JS services, I will cite data from fiscal year 1978. In fiscal year 1978, the JS agencies registered and assessed more than 20 million applicants. During that year, the Job Service placed in jobs over 4.6 million applicants. These applicants included 204,000 migrant and seasonal farmworkers. Over 106,000 of these migrant and seasonal farmworkers were referred to jobs and 82,000 were placed in jobs. One out of five of these placements was in nonagricultural employment.

Over the past 5 years, the United States Employment Service has channeled substantial staff resources to ensure equitable provision of JS services to migrant and seasonal farmworkers. These USES efforts have been in conjunction with concerns expressed by farmworker organizations as parties to a consent order entered in the case of NAACP v. Marshall, in 1974.

The increased emphasis placed on serving migrants and seasonal farmworkers by the United States Employment Service is illustrated by the following actions we have taken.

First, to insure that the network of State and local employment offices is responsive to the expressed employment related needs of migrants and seasonal farmworkers, the United States Employment Service issued regulations in January 1977 which specifically govern the provision of employment services to migrant and seasonal farmworkers. The regulations place specific and special requirements on State agencies to ensure that migrant and seasonal farmworkers are provided the full range of JS services. The regulations also established a JS complaint system which operates in all 54 States and the trust territories. The JS complaint system covers complaints by applicants against the Job Service agencies themselves and against employers who place job orders with the Job Service. All complaints regarding the Farm Labor Contractor Registration Act, the Fair Labor Standards Act, and the Occupational Safety and Health Act are forwarded to the appropriate agency.

Second, the USES sets forth program emphasis statements in its annual Program Budget Planning Guidelines. For the last several years, migrant and seasonal farmworkers have been specified as a top priority target group for program emphasis by USES, second only to veterans who receive perference by legislative mandate.

Third, since fiscal year 1976, the USES has provided substantial additional funds to State agencies to conduct outreach and other migrant and seasonal farmworker activities, such as field checks on agricultural job orders placed in the interstate clearance system.

Outreach is conducted in order to reach those migrant and seasonal farmworkers who may not be aware of the placement and other services offered by the Job Service. Outreach activities by JS staff resulted in contact with over 190,000 migrant and seasonal farmworkers in fiscal year 1978.

Fourth, emphasis has been placed on coordination of services between JS offices and CETA migrant programs. Local office outreach workers and other staff have established cooperative arrangements for referral of JS applicants to CETA migrant sponsors and other migrant and seasonal farmworker organizations for training, work experience programs, emergency assistance and supportive services. In some locations migrant program staff are outstationed at JS local offices and vice versa. Migrant and seasonal farmworker organizations and other agencies perform outreach for JS and refer migrant and seasonal farmworkers to JS for employment assistance. Approximately 39,000 migrant and seasonal farmworkers were reached through outreach for JS by cooperating agencies in fiscal year 1978.

Fifth, the USES established a migrant and seasonal farmworker monitor advocate system at the State and Federal levels.

Each State has a migrant and seasonal farmworker monitor advocate who monitors the State agency's provision of services to migrant and seasonal farmworkers and the operation of the JS complaint system. At the Federal level, monitor advocates are located in each of the Department's 10 regional offices and in the national monitor office here in Washington.

Sixth, regulations issued in 1977 established a review and assessment process by which State agencies are required to constantly monitor their own compliance with JS regulations regarding migrant and seasonal farmworkers. The regulations also establish a strong Federal oversight role calling for Federal staff from the regional and national offices to review State agency compliance. The Federal monitor advocates provide leadership in this monitoring.

We have been diligent in exercising this Federal oversight role. During the past two years, we have conducted 56 comprehensive onsite reviews of State

agencies' compliance with the regulations. This represented a substantial effort calling for structured interviews with approximately 2,300 State and local office staff members. Eighty-two thousand (82,000) JS applications and job orders were reviewed as well as complaint records, reports and other documents.

This special emphasis by USES on service provision to migrant and seasonal farmworkers has had a positive impact on migrant and seasonal farmworkers. The number of migrant and seasonal farmworker applicants receiving JS service has risen significantly in recent years. For example, from fiscal year 1976, the first year for which complete migrant and seasonal farmworker data is available, to fiscal year 1978 the number of migrant and seasonal farmworkers conseled doubled; those referred to supportive services increased by 263 percent; job development services to migrant and seasonal farmworkers increased 143 percent, and referrals to jobs rose 10 percent.

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More importantly, migrant and seasonal farmworkers received services at rates substantially higher than non-migrant and seasonal farmworkers. For fiscal year 1978:

- proportionately one-third more migrant and seasonal farmworkers were referred to jobs than other applicants.
- migrant and seasonal farmworker applicants filing job service applications were nearly twice as likely to be placed in jobs as other applicants.
- migrant and seasonal farmworker applicants were referred to supportive services at four times the rate of non-migrant and seasonal farmworker applicants.
- proportionately twice as many migrant and seasonal farmworkers received job development assistance as non-migrant and seasonal farmworker applicants.
- migrant and seasonal farmworkers were 34 percent more likely than other applicants to receive some service (job referral, job development, testing, counseling, referral to training and referral to supportive services) from a State JS office.

We believe our actions, in terms of special emphases and Federal oversight attention, demonstrate our commitment to addressing the employment needs of migrant and seasonal farmworkers and the results, in terms of the level of services provided, attest to the success of our efforts. In addition to the basic employment services provided by USES under the Wagner-Peyser Act, the USES also advises the Immigration and Naturalization Service regarding certification of employer's request for temporary foreign agricultural labor under the Immigration and Nationality Act. Under this program, the USES is responsible for ensuring that farm operators recruit alien workers only after a strenuous search for domestic workers and only if prevailing wages and job conditions are offered.

In considering requests for temporary labor certifications in agriculture, the Department recognizes its dual responsibility to safeguard employment opportunities at fair wages and safe working conditions for American workers while assuring adequate labor supplies for growers. In 1978, approximately 15,441 certifications for temporary agricultural workers were

issued to supplement the American workforce. The number was down from the 20,600 certified in 1974, representing a continuing trend toward increased use of domestic workers.

This area of activity is one of substantial controversy and a number of law suits have resulted. These legal actions have been included in the list of lawsuits provided to the Committee.

The Job Service also performs several other specific activities designed to ensure that employers who use the interstate clearance system to recruit workers meet certain conditions. This is done to protect those workers recruited through the JS system. These activities include:

1. The conduct of reoccupancy housing inspections of all housing used by agricultural employers who place job orders in the clearance system.

2. Field checks on a sample of agricultural clearance orders where the Job Service has placed migrant and seasonal farmworkers in order to verify that the wages, working conditions, hours and housing are stated on the job order.

3. Determining if farm labor contractors possess a valid certificate of registration issued pursuant to the Farm Labor Contractor Registration Act prior to providing job services.

These activities of USES - the preoccupancy housing inspections and random field checks and verification of contractor registration - are coordinated with the Employment Standards Administration (ESA) and the Occupational Safety and Health Administration (OSHA). This coordination is particularly important since the JS is not an enforcement agency and has no sanction authority other than not serving the employers. ESA and OSHA are the legal enforcement agencies.

We have recently reviewed our coordination efforts in the area of migrant housing. This has resulted in a new interagency agreement establishing improved procedures for coordinating housing inspections among OSHA, ESA and JS agencies. As Mr. Berrington explained in earlier testimony, these procedures are designed to eliminate duplication and overlap through the coordinated targeting of housing inspections, to share inspection information among agencies, and to refer unsafe housing situations to the appropriate agency with enforcement jurisdiction and sanction powers.

Implementation of these new improved housing inspection procedures will be monitored by Regional Migrant Coordinating Committees, chaired by ESA, and established by the Department in 1977. As Mr. Berrington testified earlier, these are the same committees which provide overall coordination in the Department's efforts to provide quality service to migrants and seasonal farmworkers.

The Department of Labor coordinates with other Federal agencies such as, the Department of Agriculture the Community Services Administration, the Department of Housing and Urban Development, where specific program responsibilities are closely related. For example, the Department recently signed an agreement with these agencies calling for joint efforts directed at improving migrant and seasonal farmworker housing. That agreement, effective October 1, 1979, targets funds on a coordinated basis to 31 nonprofit, community based organizations through grants for the construction and rehabilitation of migrant housing.

Madam Chairwoman, this concludes my prepared statement. I would be pleased to answer any questions that you may have.

APPENDIX

Attached is a list of actions which migrant groups have pending against the Department of Labor as of November 1, 1979.

A. National Congress of Hispanic American Citizens v. F. Ray Marshall (C.A.D.C. No. 79-1228).

B. Plaintiff alleged that in not issuing standards for field sanitation, farm safety equipment, roll over tractor protection, personal protective equipment, and nuisance dust and noise for agriculture, the Secretary had abused his discretion and unlawfully withheld and unreasonably delayed agency action in violation of 5 U.S.C. 706(APA) and violated the time provisions of section 6(b)(1)-(4) of the OSH Act (29 U.S.C. 655(b)(1)-(4).

C. Injunction sought directing the Secretary to issue the standards.

D. District Court found for the plaintiff (425 F. Supp. 308 (D.D.C. 1975)); D.C. Circuit reversed and remanded (554 F. 2d 1196 (C.A.D.C. 1977)). On remand the District Court found for the plaintiffs (D.D.C., Civil Action No. 2141-72, decided 12/21/78). The Secretary obtained a stay from the D.C. Circuit (C.A.D.C., No. 79-1228). The case has been briefed and argued in the D.C. Circuit Court of Appeals and we await a decision.

NAACP v. Marshall (D.D.C. Civil Action No. 2010-72)

Farmworker organizations and individual farmworkers sued the Secretary, the Assistant Secretary of Labor for Manpower, the Deputy Assistant Secretary for Manpower, the Associate Manpower Administrator, the Director of United States Employment Service, and the Director of the Rural Manpower Service of the United States Employment Service.

The complaint charged the United States Employment Service (ES) violated plaintiffs rights under the Fifth Amendment, Title VI of Civil Rights Act of 1964, the Immigration and Naturalization Act and regulations thereunder and the Wagner-Peyser Act and regulations thereunder, by approving program operations and providing financial support for State rural manpower services and employment services while these State agencies engaged in certain discriminatory practices.

The District Court held for the plaintiff, NAACP v. Marshall, 381 F. Supp. 1003, 1010-1111 (D.D.C. 1973). The Court found that defendants violated plaintiffs' right under the Fifth Amendment and the Civil Rights Act and the Wagner-Peyser Act to receive the services provided by the Rural Manpower Service (RMS) and ES unencumbered by discrimination. The Court entered an injunction prohibiting defendants from discrimination or other unlawful practices against migrant farmworkers. On August 3, 1974, the Court entered a consent order proposed by the parties which implemented the Court's earlier order. In 1978 plaintiffs renewed their litigation in the District Court with the intent of (1) broadening the scope of relief provided by the Court's orders and (2) demonstrating that the Secretary had failed to comply with the Court's orders. The parties are presently negotiating a resettlement of the case.

A. Pedro de la Fuente v. ICC, DOT, Department of Labor, Stokely Van Camp, et al U.S.D.C. ED Ill., C.A. No. CV 78-C090-D.

B. Plaintiff alleges that the federal agencies failed to enforce applicable statutory provisions and regulations dealing with health and safety of farm workers transported interstate to and from Illinois since 1977.

C. Plaintiff in the class action seek a declaratory injunction against the federal agencies and monetary relief from private defendants.

D. Discovery is now in progress.

A. Nazario Guerrero v. Ramiro Garza, Jr., et al U.S.D.C. WD Wisc., C.A., No. 75-C-399.

B. Plaintiff alleges that the Department of Labor has failed to enforce FLCRA in regard to housing, hiring and recruiting.Also, there is an issue as to who is the proper plaintiff.

C. Injunctive relief, declaratory judgment, and monetary damages.

D. The claims of plaintiff Guerrero against the Federal defendants were dismissed with prejudice by stipulation following partial trial of the case (December 1978). Plaintiff moved to amend the complaint to add a new group of plaintiffs called the "Rivera family." Leave was granted. DOL's motion for reconsideration and withdrawal of leave granted plaintiff to amend the complaint, or in the alternative for an order dismissing the complaint, is now pending. Briefs are due November 15, 1979.

A. Cantu v. Owatanna Canning Co., 3-76-374, DC MN

B. Challenges ETA oversight of misleading job orders and the complaint system. The job orders are alleged to be misleading in that they do not detail the payment system sufficiently and farmworkers were underpaid.

C. Injunctive relief sought.

D. In discovery.

A. Cruz v. Pioneer HiBred, B-79-115 SD TX.

B. Challenges ETA oversight of misleading job order in that the job orders are alleged to have offered housing when none was available, and the complaint system in that complaints filed with the Texas Employment Commission are alleged to have been mishandled.

C. Injunctive relief sought.

D. Case pending.

A. Martinez v. Pioneer HiBred, B-79-33 S.D. TX.

B. Challenges ETA oversight of misleading job order and the complaint system. The allegations are essentially similar to those in Cruz v. Pioneer HiBred.

C. Injunctive relief sought.

D. Case pending.

A. Molina v. Marshall, 78-0651 D.C. Court of Appeals.

B. Challenges the deletion in 1977 and the repromulgation of the ES housing standards as violating the APA. Plaintiff also claims a right to preoccupancy housing inspections since Department has always done them.

C. Injunctive relief.

D. DOL won district court; now on appeal.

A. Lopez Rivas v. Marshall, et. al 78-2175 D.C. P.R.

B. Seeks relief for Puerto Ricans left behind in Puerto Rico during the 78 apple harvest.

C. Damages against the growers, unclear against the Secretary.

D. Pending on motion to dismiss.

A. Barrios v. Marshall, D.C. Ariz.

B. Plaintiff claims certification for foreign labor should not be given because a strike exists.

C. Injunction.

D. T.R.O. issued, hearing coming up.

A. Rivera v. Marshall, B-77-115 S.D. TX.

B. Challenges ETA oversight of misleading job orders and the complaint system. Plaintiff claims that he and his crew accepted a job order and then had it cancelled just before the time they were to start.

C. Injunctive relief sought.

D. Case pending.

A. Lerma v. Stokeley Van Camp, 76C 3052 N.D. Ill.

B. Challenges ETA oversight of misleading job orders and the complaint system. The job orders are challenged for being misleading about the availability of work and working conditions. It is also alleged that ETA and the Illinois State Employment Service did not properly review the job order to determine what wages should be paid.

C. Injunctive relief sought.

D. Pending on motion to dismiss.

Hustead v. Marshall, 79-3634-CIV-WMH, D.C. S.D. Fla., filed 10/9/79

The plaintiff (the attorney for Florida Rural Legal Services) seeks FLSA information under the FOIA.

The plaintiff asks that the court order the information released.

Just filed.

[Whereupon, at 12:40 p.m., the hearing was adjourned, to reconvene subject to the call of the Chair.]

APPENDIXES

APPENDIX 1.—STATEMENT OF THE NATIONAL FOOD PROCESSORS ASSOCIATION

National Food Processors Association
1133 Twentieth Street N.W., Washington, D.C. 20036
Telephone 202/331-5900

Legislative Affairs Division
Richard W. Murphy
Director/Vice President
202/331-5939

29 November 1979

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The Honorable Cardiss Collins
Chairwoman, Subcommittee on
Manpower and Housing
Government Operations Committee
House of Representatives
Washington, DC 20515

Dear Congresswoman Collins:

Recently your subcommittee conducted a hearing on the Labor Department's implementation of the Farm Labor Contractor Registration Act. Many of our members have been concerned about the Department's implementation of the Act.

When the hearing was announced, we had inquired if the association would be given an opportunity to testify. We were told that the witness list was closed but were advised by the staff that we could provide written testimony to be included in the hearing record.

Attached is our written statement. We would appreciate if you would have it included in the hearing record.

Thank you.

Sincerely,

Richard W. Murphy

cc to: Congressman Wayne Grisham

STATEMENT OF THE
NATIONAL FOOD PROCESSORS ASSOCIATION
BEFORE THE
HOUSE SUBCOMMITTEE ON MANPOWER AND HOUSING
REGARDING THE
FARM LABOR CONTRACTOR REGISTRATION ACT

Thank you for the opportunity to testify regarding the implementation of the Farm Labor Contractor Registration Act (FLCRA) by the Department of Labor.

The National Food Processors Association (NFPA) has 582 food processing members who produce over ninety percent of the nation's canned fruit, vegetable, meat, fish and specialty products and a substantial portion of other food products. NFPA, formerly the National Canners Association (NCA), appreciates the opportunity to testify on a matter that concerns many of our members.

Some members of NFPA employ migrant workers who perform field operations. Most members of NFPA employ workers who are not true migrants, but are considered to be migrant workers by the Labor Department under FLCRA, even though they may be permanent employees and reside locally, and even though they are not farmworkers, but work at the processing plant.

The National Food Processors Association believes that all employees in our industry, including migrant workers, should be treated humanely and fairly. We urge our members to do so. The fair treatment and compensation of all employees is essential to maintain high levels of productivity and high standards of work.

There are many protections in law to ensure equitable job conditions for all employees of processors, including migrant workers. NFPA supports the legitimate protections afforded by these laws, which include the Fair Labor Standards Act, the Wagner-Peyser Act, the Occupational Safety and Health Act, state vehicle safety and insurance laws, and state contract law.

Misinterpretation by Labor Department

In 1963, the Congress passed the Farm Labor Contractor Registration Act to protect migrant workers from abuses by "crew leaders" or "farm labor contractors". The section on Congressional findings states, "The Congress hereby finds that . . . /there are/ certain irresponsible contractors for the services of migrant agricultural laborers who exploit producers of agricultural products, migrant agricultural laborers and the public generally . . ." (emphasis added).

The Congress in 1974 amended the Act. As a result of the Labor Department's unexpected and unwarranted interpretation of those amendments, many of our members, who are producers of agricultural products, now find that, instead of being protected by the Act, they are being required to register under it.

This is due to the Labor Department's interpretation and implementation of two 1974 amendments to subsections 3(b)(2) and 3(b)(3). Subsection 3(b)(2) states that the term "farm labor contractor" shall not include "any

farmer, processer, canner, ginner, packing shed operator, or nurseryman who personally engages in any such activity for the purpose of supplying migrant workers solely for his own operation." The word "personally" was added in 1974 to the subsection. According to the Department, no corporation can act "personally", even though the Act defines a "person" to include a corporation. By this reasoning, the Labor Department requires corporations who employ "migrant workers" to register under the Act, but not non-corporate entities. Subsection 3(b)(3) says that "any full-time or regular employee of any entity referred to in . . . [subsection 3(b)(2)] who engages in such activity solely for his employer on no more than an incidental basis" is not a farm labor contractor. The Department has interpreted the subsection to mean that almost any contact between an employee and a "migrant worker" is more than "an incidental basis", so that virtually any employee of a processor or canner, who deals with a migrant worker, must register.

We believe these interpretations are incorrect and have resulted in the misapplication of the law. There have been several federal district court cases on these points, especially on subsection 3(b)(2). In all cases but one, to our knowledge, the courts have ruled against the Labor Department's interpretation.*

The Department's interpretation of subsection 3(b)(2) and 3(b)(3), in conjunction with the definition of "migrant worker", has major implications. If its interpretation is correct, a huge number of agricultural producers and processors would have to register and comply with the attendant filings and requirements, a fact which the Labor Department has not made this commonly known throughout the agricultural sector.

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*The following cases decided by five different District Judges have rejected the interpretations of Sections 3(b)(2) and for 3(b)(3) put forward by the Department of Labor:

Marshall v. Herringer Ranches, Inc., 466 F. Supp. 285 (E.D. Cal., February 27, 1979)(Sections 3(b)(2) and 3(b)(3))(Hauk, J.);

Usery v. Paramount Citrus Assoc., Inc., CV 76-1544-WMD, Marshall v. Santa Clara Produce, Inc., CV 77-1899-WMB (C. D. Cal., February 15, 1979)(Section 3(b)(2))(Byrne, J.);

Marshall v. Green Goddess Avocado Corporation, 84 CCH Labor Case 33,712 (S. D. Cal., August 3, 1978)(Section 3(b)(2))(Enright, J.);

Jenkins v. S & D Chaissan & Sons, Inc., 449 F. Supp 216 (S. D. N. Y. 1978)(Section 3(b)(2))(Werker, J.);

Marshall v. Silver Creek Packing Co., 83 CCH Labor Case 33,615 (E.D. Cal., August 23, 1977)(Section 3(b)(2))(Crocker, J.).

The following case has accepted the interpretation of Section 3(b)(2) put forward by the Department of Labor:

Marshall v. Souza Brothers Packing Co., CV-77-2353-R (C.D. Cal., November 28, 1977)(Section 3(b)(2)).

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To register processors and producers as farm labor contractors would divert limited resources of the Department away from regulating crew leaders as Congress intended. It is no doubt easier to enforce the Act against processors and producers, who are readily identified and located, than against bona fide crew leaders, who may be difficult to identify or locate.

Arbitrary Implementation

The Labor Department's interpretation of the word "personally" in subsection 3(b)(2) means that the application of the law will be most arbitrary. It means that two virtually identical processors, one a corporation and the other not, receive radically different treatment under the law. Under the Department's meaning, the corporation is required to comply with a long list of requirements, some of them inappropriate and unnecessary and some of them duplicative of other laws. The non-corporate processor is exempt.

The possibility for two similar employers to be treated differently under the Department's interpretation of the law is not hypothetical. A processor that is a partnership, for example, is exempt, while a corporate processor with a similar size, similar product and similar operation is not. We do not believe such arbitrary application of FLCRA was intended by Congress.

Result is Red-Tape

The basic impact of requiring processors and canners to register under FLCRA is to add to their red-tape and paperwork burden. It also adds an element of uncertainty as to whether the processor is in full compliance with the numerous items in the law or is inadvertently exposed to some penalty. There are several items in the law that seem unnecessary or duplicative, serving no purpose aside from harassment.

Compliance with the Labor Department's interpretation of the Farm Labor Contractor Registration Act is not simply a matter of registration. To register as a farm labor contractor, one must be fingerprinted. Registration must be renewed every calendar year and fingerprinting must be repeated every three years.

The registration card must be in immediate personal possession at all times and it must be shown prior to dealing with anybody in the "capacity as farm labor contractor". Anyone who is registered must be listed in a public central registry maintained by the Secretary of Labor in Washington.

Unnecessary Requirements

Processors frequently wonder why these requirements and others are being imposed upon them. For example, any person who registers must authorize the Secretary of Labor as the lawful agent "to accept service of summons in any action against such farm labor contractor at any and all times during which such farm labor contractor has

departed from the jurisdiction in which such action is commenced . . ." In addition, any person who registers must notify the Secretary of Labor within ten days of each and every address change.

These two requirements, and others, are appropriate where a crew leader may be transient and difficult to track. For a processor, who is tied to his plant and would be absent from that address for only brief periods, they are superfluous. These two requirements suggest that the Act was intended by Congress to regulate crew leaders, and not processors. The same might be said of fingerprinting and listing in a public central registry.

Uncertainty in Compliance

The Act is a nagging source of uncertainty for processors as to whether they are in compliance with the law. In large part, this is due to the interpretation of the Act by the Labor Department. Here are some examples:

1. Many corporate processors believe they should not register under FLCRA due to the exemption in subsection 3(b)(2). They believe corporations can act "personally" since subsection 3(a) defines "person" to include a corporation. This is in direct conflict with the Department's view. The uncertainty for these corporations will continue until the question is finally resolved by the courts, the Department changes its interpretation, or Congress clarifies the law.

2. Processors do not know which of their employees should register, if any. Any full-time and regular employee of a processor, who deals with migrant workers "solely for his employer on no more than an incidental basis", is exempt from registration. Because the Labor Department's interpretation of "an incidental basis" is so narrow, a processor is always faced with the possibility that the Department will say an employee having some minor contact with a migrant worker must register. The result of such a determination is a citation and fine. Because of uncertainty about what is "an incidental basis", it may be difficult if not impossible to know whether a processor is in compliance with FLCRA.

3. A processor often cannot tell who among his employees is a "migrant worker" under FLCRA. The Labor Department says that some processing plant employees are migrant workers because "agricultural employment" is defined to include "the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state."

This broad definition includes many employees who reside locally, are permanently employed, and are not migrant in any sense. A processor who does not employ any migrants may still face a citation and fine because the Act does not conform to any rational understanding of what a migrant worker is. Rather, the definition of migrant worker hinges on the arbitrary and undefined term "commodity in its unmanufactured state".

The problem is compounded by the fact that the Department apparently does not have a clear understanding of the law. This is evident in that enforcement is not uniform or consistent in all parts of the country. In one area, plant managers must register as farm labor contractors because

processing plant employees are considered to be migrant workers. In another area, only fieldworkers are considered to be migrant workers and only those supervisors who deal with them must register. In yet another area, only bona fide crew leaders who are not employees of the processor must register. In many areas, processors have not been approached to register at all.

Additional Cost

Even where processors register, they usually find that the substantive protections afforded migrant workers by FLCRA are provided by other laws, so that the Act becomes duplicative. Even so, the processor must still spend many hours in the registration process, filling out forms, studying the law's requirements and ensuring compliance with them. In many cases, processors and their employees have had to spend many hours with Labor Department compliance officers. The time and effort consumed mean unnecessary cost for processors in the form of lost productivity. Processors wonder why this is necessary when they see no additional benefit to migrant workers resulting from it.

Legal Protections

The basic issue is whether migrant workers have adequate protection under the law other than FLCRA. When we object to the Labor Department's requirement that corporate processors and processor employees register under FLCRA, we are not advocating that migrant workers should not have protection under the law.

In fact, there are many laws that protect migrant workers who are employed by processors. It may be helpful to cite some examples:

1. The Fair Labor Standards Act requires payment of the minimum wage, requires record keeping, and provides for certain fair job conditions.

2. The Wagner-Peyser Act requires, prior to employment, a written statement of job conditions to employees hired through the interstate employment service. Some states require such statements for all migrant workers.

3. The Occupational Safety and Health Act provides for safe and adequate housing, and for safe and healthy working conditions.

4. The U. S. Department of Transportation Act provides for the safe interstate transportation of workers. The states also regulate the transportation of workers and vehicle and driver safety.

5. The Federal Unemployment Tax Act requires most processsors to pay unemployment insurance taxes that would cover migrant workers.

6. The Social Security Act requires recordkeeping and payment of social security taxes.

7. The Farm Labor Contractor Registration Act, even if a processor did not have to register, requires him to keep complete payroll records for any migrant crew (Sec. 14) and also requires him to ensure that any crew leader he contracts with is in full compliance with the Act (Sec. 4(c)).

8. Contract laws require that any promise--oral or written-- of job conditions must be lived up to by a processor.

Two legal cases, cited at the hearing on November 13, well demonstrate the protections available to migrant workers under laws other than FLCRA.

The first case, Abraham v. Beatrice Foods Co., involved allegations of misrepresentation of working conditions. The case was pursued under the Wagner-Peyser Act and an out-of-court settlement was reached.

The second case, Cantu v. Owatonna Canning Company, has not yet been settled. However, it is clear at this point that the main issue falls under the Wagner-Peyser Act. While charges have been brought under FLCRA, the lawsuit would not be affected by the clarification of the exemptions in subsections 3(b)(2) and 3(b)(3).

In short, the requirement for processors to register under FLCRA provides no significant additional protection to migrant workers, yet it adds to the compliance burdens for the industry.

The Department spends a great deal of its resources on citing processors and their employees for failure to register. This reduces the availability of compliance officers to control bona fide crew leaders, particularly those who are substantive violators or repeat offenders. A change in the Department's interpretation of subsections 3(b)(2) and 3(b)(3), or legislative clarification would resolve this problem.

National Food Processors Association
1133 Twentieth Street N.W., Washington, D.C. 20036
Telephone 202/331-5900

LEGISLATIVE AFFAIRS

24 January 1980

The Honorable Cardiss Collins
Chairwoman
Subcommittee on Manpower and Housing
Committee on Government Operations
U. S. House of Representatives
Washington, DC 20515

RECEIVED
JAN 29 1980

Dear Congresswoman Collins:

Several inaccurate statements were made about members of the National Food Processors Association (NFPA) at the hearing before your subcommittee on November 13, 1979. The hearing concerned the implementation of the Farm Labor Contractor Registration Act (FLCRA).

For the record, we would like to correct some of the more significant incorrect statements. We asked those companies mentioned, who are members of NFPA, to respond to the allegations. Their responses are attached.

The Migrant Legal Action Program (MLAP) witness said that corporations have shown "a general pattern" of abusing migrant workers, and referred to an exhibit attached to his testimony. The exhibit, while talking about companies in several states in general terms, cited only two specific examples involving corporations. One of those, Naas Foods, Inc. is a member of NFPA. In separate correspondence, MLAP mentioned two companies, Owatonna Canning Company and Aunt Nellie's Foods, which are NFPA members, and we would like to discuss those cases also.

The first inaccuracy of the MLAP testimony is the statement that many companies, including canning companies, abuse migrant workers. Speaking for the canning industry, we can say that that statement is completely false. The few cases mentioned do not establish a pattern or any widespread abuse. Canners who employ migrant workers recognize that fairly treated workers do a better job and may return for employment in future seasons.

As indicated in the attached letters, MLAP has consistently stated its allegations as if they were fact. In actuality, the allegations have been either shown to be untrue, or where a discrepancy has been established, compensation has been made.

For example, Naas Foods, Inc. made additional payments to several migrant workers after a Labor Department finding that minimum wage requirements were not met. Subsequently, the Indiana Legal Services Organization (LSO) learned of this when Naas Foods voluntarily gave LSO representatives access to company records. The LSO then filed suit. Since the issue was already settled by the Department of Labor and Naas Foods, it appears that the LSO litigation was, as the counsel for Naas Foods states, "nothing more than an attempt to justify their (LSO's) existence and budget".

MLAP implies that processors are guilty of violations under FLCRA. But in each of the three cases, allegations under FLCRA were either dismissed or dropped. This substantiates the industry position, which NFPA presented to the subcommittee in the attached testimony, that canning companies should not be required to register as farm labor contractors. As we explain, processors are already regulated by numerous laws other than FLCRA, which govern the employment of all employees, including migrant workers.

We suggest that this letter and the attached responses should be made a part of the hearing record in order to correct the inaccurate statements made by MLAP.

Thank you.

Sincerely,

Claude D. Alexander
Legislative Representative

cc: Congressman M. Caldwell Butler
Mr. Peter Nauger, Naas Foods, Inc.
Mr. R. Wayne Olmsted, Owatonna Canning Co.
Mr. C.J Blaska, Aunt Nellie's Foods

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WAYNE W. HINKLE
L. R. RACSTER
WILLIAM W. HINKLE

November 29, 1979

Mr. Claude D. Alexander
National Food Processors Association
1133 Twentieth Street N.W.
Washington, D.C. 20036

Re: Testimony of John Ebbott
of Migrant Legal Action Program
Relevant the Farm Labor Contract
Registration Act

Dear Mr. Alexander:

As counsel for Naas Foods, Inc., Mr. Peter Mauger has requested that we respond to you relevant the testimony of Mr. Ebbott wherein the migrant labor case is pending against Naas Foods and denoted in Mr. Ebbott's testimony at Page 6 of Exhibit A.

First of all, this litigation is pending upon our Motion for Summary Judgment before the Federal District Court in Fort Wayne, Indiana, and has so been pending since January of 1978 without any further action by LSO on behalf of its clients other than a simple response to said motion which they filed in April of 1979.

The statement describing the case as set forth in the exhibit is to say the least, misleading.

First of all, reference is made to a letter to Mr. Sosa requesting 165 women and 160 men to work in Portland, Indiana. There is on file with our Motion for Summary Judgment copies of a bilingual disclosure statement setting forth the exact terms of employment. That statement was furnished to LSO representatives prior to their commencing litigation.

Naas Foods also welcomed an LSO case worker into our plant prior to the filing of the litigation and furnished them copies of any and all information requested relevant the migrant employees of Naas Foods. It was from that information voluntarily furnished that LSO became aware of a Department of Labor finding that certain minimum wage requirements were not met in payments to migrant workers. The litigation eventually commenced by LSO is in respect to very small amounts and I have attached for your information a summary which is Exhibit Q to our defense to the litigation. That summary shows the deductions allegedly made bringing the employee's wage below the minimum wage.

Contrary to the assertions of the LSO in the exhibit description, the advances were not for Company cafeteria credit. The advances were in cash to each respective employee. The advancements being in cash were within the full control of the employee and could have been used to buy groceries or food at any business establishment. Each migrant labor living facility at Naas' labor camps are supplied with cooking units. Naas does, however, as a convenience to its migrant laborers provide a cafeteria which is operated by a Mexican-American couple who prepare foods to the taste and style the migrant laborers are accustomed. Such cafeteria facility is also very economical and it is for that reason that the migrant workers use the cafeteria.

Reference is made at Paragraph 4 of LSO's explanation of the case that workers were brought several weeks before steady work was available to the State of Indiana. That statement of several weeks is grossly misleading as workers were brought to the plant only a few days before full-time work was available. Work would have been available upon their arrival had it not been for the extremely wet August in 1978. You might recall that August of 1978 was the wettest August in forty years in the State of Indiana resulting in enormous crop losses and in a large portion of the State being declared a disaster area. Many farmers in our area were granted disaster loans due to the extreme wet conditions. As a result, the starting of the season was suddenly delayed because of our inability to harvest ripened crops in muddy fields.

Paragraph 5 of LSO's explanation of the Naas case intends to imply that LSO or some other individual notified the Department of Labor of violations by Naas which is not the case. The Department of Labor made a routine examination during the first couple of weeks of the 1978 tomato pack and discovered the alleged violations. As soon as the extent of the violations were actually determined by the Department of Labor, Naas made full restitution to all employees as indicated by the enclosed summary sheet previously referred to and the matter resolved to the satisfaction of the Department of Labor. It was only after that matter was resolved that LSO commenced litigation.

As for the FLCRA violations, the Department of Labor found none and the litigation now pending before the Federal courts is based solely upon migrant labor testimony versus testimony of Naas employees and personnel. The question is one of fact as to whether the disclosure statements as furnished by Naas were distributed as required by law. It is the position of Naas and the crew leader, Edmundo Sosa, that they were. Until such time as the Federal Court should determine that they were not, a request by the LSO that the Department of Labor not renew Mr. Sosa's registration seems grossly unwarranted.

We view the LSO position in filing this litigation relevant the sums of money shown on alleged deductions and only after the matter having been resolved by the Department of Labor and Naas as nothing more than an attempt to justify their existence and budget.

As can be shown by the summary, the loans made were in even dollars and obviously cash advancements and not for cafeteria credit.

You should also be advised that the bus fares that were deducted as shown in the attached summary were deducted over a substantial number of weeks as were the collected loans and not in lump sums from single paychecks.

I would not only once again like to point out that restitution for alleged overdeductions in violation of minimum wage laws was made prior to the LSO litigation and by agreement with the Department of Labor but also within sixty days after the original violation was allegedly committed.

Apparently, LSO in Indiana has taken the attitude that they are the enforcement division of the Federal Government for violations of FLSA and FLCRA as a further means to justify their budget and existence. However, it may well be that they are using the findings of the Department of Labor as a means to create case loads for themselves. I would suggest that none of the seventeen workers who are plaintiffs in the Naas litigation ever first contacted LSO. I would rather believe that they were contacted as potential clients.

If I can be of any further assistance, please advise.

Very truly yours,

HINKLE & RACSTER

By Lon R. Racster

LRR/wrm

Enclosure

NAAS FOODS, INC.
SUMMARY OF ALLEGED DEDUCTIONS and REPAYMENTS
15 Migrant Employees 1978 Season

Clock No.	Employee Name	Loans Made	Loans Collected	Balance of Loans Still Due	Bus Fare Deducted	Bus Fare Repaid	Deduction for Supplies	Supply Deduction Repaid	Kind of Supplies Deducted For
2162	Maria Torreblanca	40.00	40.00		12.95	12.95			
2240	Guillermo Lopez	25.00	10.00	15.00	13.66	13.66			
2234	Rene Torres	25.00	35.00		49.82	49.82			
	Juan Manuel Sepeda *	35.00	-0-	35.00					
2160	Ernesto Lopez	45.00	30.00	15.00	-0-	-0-	31.00	31.00**	Raincoat Roots
2195	Antonio Lopez	30.00	30.00		-0-	-0-			
2271	Raymundo Garza	15.00	15.00		54.43	54.43			
2243	Ramon Gonzalez	30.00	30.00		65.94	65.94			
2272	Miguel Melendrez	15.00	15.00		72.47	72.47			
2175	Juan Chavez	45.00	45.00		-0-	-0-	6.00	11.13	Roots (Repa $6. + Ince
2217	Ruben A. Solis	20.00	20.00		60.91	60.91			
216	Jesusa A. Gutierrez	50.00	35.00	15.00	5.01	5.01			
2251	Ignacio Tabares	85.00	85.00		90.00	90.00			
241	Peta Fonseca	20.00	20.00		67.91	67.91			
233	Graciela De La Cruz	20.00	15.00	5.00	44.35	44.35			

* Juan Manuel Sepeda came up on bus, but was only 17 yrs. old and could not work in IND. He kept using other people's clock no. to get loans. Also used other peoples check stubs to try & get money repaid to him that was never deducted from him.

** Ernesto Lopez - Check to repay supplies was for $16. as we deducted the $15. Loan still due.

NOV 26 1979

OWATONNA CANNING COMPANY
P.O. BOX 447 • OWATONNA, MINNESOTA 55060 • PHONE 507/451-7670

November 19, 1979

Mr. Claude D. Alexander
Legislative Representative
National Food Processors Association
1133 20th Street N.W.
Washington, D.C. 20036

Dear Claude:

Today I received your letter with a copy of a letter from a Mr. Mark Schacht who apparently is a Legislative Advocate for the Migrant Legal Action Program. In his letter Mr. Schacht made several statements concerning the Owatonna Canning Company and the information he provides contains flagrant untruths to the point of where he may be opening himself for a liable suit.

First of all, the case of Cantu vs. Owatonna was filed over 3 years ago and has not come to court yet. Presently it looks like it might come to court sometime the end of next year. Since nothing has been proven, the charges made by the legal aid attornies are merely allegations. Mr. Schacht writes as if these allegations are a proven fact.

Mr. Schacht says the workers arrived in Minnestoa and were paid inadequate wages. He also says that they were to expect an average of $3.00 per hour in 1976 and actually earned less than Federal minimum wage of $2.00 per hour. Both these statements are incorrect. They are simply not true. Neither is it true that children under 16 worked in the fields and were not paid. Anyone who worked in the fields was paid. It is untrue that no accurate records were kept for the hours worked. We have complete records of what transpired in 1976. It is untrue that our personnel manager transported workers. Indeed he was not even involved with the program.

Furthermore, at no time have we used as a defense in the law suit an attempt to place responsibility on the lower echelon crew leaders. That is a complete lie. We have taken complete responsibility for this case from the very beginning.

Originally the law suit filed by a legal aid was very broad and covered nearly every law applying to migrants. Over the past three years, as legal aid investigated the Owatonna Canning Company, they have gradually become to understand our system and have dropped most of the charges of the original law suit. All that remains is a matter of whether records we kept met Government requirements or not. The whole law suit will be decided on that matter.

It should be further noted that we had been thoroughly inspected by several different Federal and State Agencies each year for the last 10 years. This is why the law suit is also aimed at such agencies as the Texas Employment Commission, the Department of Labor, the Minnesota Employment Services and even the Secretary of Labor in Washington. Since we were inspected in the years 1975-76 and the government agencies found no violations it was necessary for legal aid to file a law suit against the governmental agencies too. Originally they were suggesting that we might have bribed the government agencies but there was no truth to that idea and they have not pursued it.

One final point is important. The matters with which the law suit is concerned actually do not relate to FLCRA sections that are under question for amendment. I believe Mr. Rosenthal talked to our attorney, Mr. Jim Strother, and has further information on that particular phase of the law suit.

I did want to get this off to you immediately so I am sending it without comment on any problems we have had with FLCRA and the way it is being interpreted. I need a little time to think of some incidents and will try to get some more information to you in the near future.

If you have any further questions or I can be of any further help on this matter, please let me hear.

Sincerely Yours,

OWATONNA CANNING COMPANY

R. Wayne Olmsted
Vice President
RWO/dmm

MICHAEL, BEST & FRIEDRICH
880 EAST WISCONSIN AVENUE
MILWAUKEE, WISCONSIN 53202

December 21, 1979

DEC 31 1979

Mr. Claude D. Alexander
Legislative Representative
National Food Processors Assn.
113323 Northwest
Washington, D.C. 20036

Re: Aunt Nellie's Foods

Dear Mr. Alexander:

We have been asked by our client, Aunt Nellie's Foods, to respond to your letter of November 15, 1979 referencing certain comments in the letter of Migrant Legal Action Program, Inc. concerning the case of Abraham v. Beatrice Foods. Our firm represented both Aunt Nellie's and Beatrice Foods with regard to that matter.

Unfortunately, the MLAP letter is apparently based solely on the allegations in the case and contains numerous inaccuracies. Although Aunt Nellie's had filed a request for seasonal employees with the Wisconsin State Employment Agency, it made no oral or written representations that employees would work 12 hours per day, 7 days per week during the harvest season. In fact, neither Aunt Nellie's nor, to our knowledge, the Wisconsin State Employment Service, had any direct contact with the individuals recruited prior to their arrival in Wisconsin. All such contacts were made by the Louisiana State Employment Service.

The letter also implies that the individuals remained in their housing for a substantial period waiting

for work, and had money deducted from their checks for food. In reality, the individuals in question arrived one evening and created a substantial disturbance the following morning. After this disturbance, they were offered and accepted transportation back to Louisiana with sufficient funds to purchase food en route, even though they had performed no work. Since they were only in Wisconsin for a very brief period of time and performed no work, they received no paychecks and hence there were no deductions, let alone excessive ones. Although meals were made available to them, the prices were considerably lower than those in local restaurants. Similarly, the housing, which they utilized only one night, had been approved by the appropriate authorities.

We are rather surprised that MLAP would present as fact the allegations in question. Certainly, MLAP should have recognized that there is a vast difference between allegations in a complaint and what actually took place. Its willingness to adopt these allegations as facts and present them as such to Senator Nelson's staff would seem to invite challenge.

If we may provide you with any further information, please contact me.

Sincerely yours,

MICHAEL, BEST & FRIEDRICH

John R. Sapp

JRS:la

cc.- Mr. David C. Lau

APPENDIX 2.—STATEMENT OF THE SOCIETY OF AMERICAN FLORISTS AND ORNAMENTAL HORTICULTURISTS

society of american florists and ornamental horticulturists
901 North Washington Street, Alexandria, Virginia 22314, Telephone (703) 836-8700

November 13, 1979

RECEIVED
NOV 27 1979

The Honorable Cardiss R. Collins
Chairwoman
Subcommittee on Manpower & Housing
House Committee on Government
Operations
U.S. House of Representatives
B-349-A Rayburn House Office Bldg.
Washington, D.C. 20515

Dear Chairwoman Collins:

On behalf of the nearly 8,000 growers, wholesalers, and retailers of floral products who comprise the membership of the Society of American Florists and Ornamental Horticulturalists, I am writing to draw your attention to some serious problems associated with the Farm Labor Contractors Registration Act (FLCRA) of 1963.

On November 13, 1979, your subcommittee held hearings on the U.S. Department of Labor's enforcement of FLCRA, and I respectfully request that this letter be made part of the hearing record.

As you know, Congress passed the Farm Labor Contractor Registration Act to stop abuses of migrant workers by so-called "crew leaders". Crew leaders were often transient and could not be located after abuses of migrant workers were discovered. Even if they could be located, they often had no insurance or other assets to pay for injuries or wrongs done to migrant workers they had recruited. In passing FLCRA, Congress intended to cover "farm labor contractors", i.e. any person who for a fee recruits, hires, or transports migrant workers for agricultural employment. Congress specifically excluded "any farmer, processor, canner, ginner, packing shed operator or nurseryman" and his "full-time or regular employee" from the definition of "farm labor contractor", if that individual "personally" hires or deals with agricultural workers solely for his own operation. The law also excludes the employees of such individuals who are involved with migrant workers "on no more than an incidental basis".

Congress exempted these farmers, nurserymen, and others who might employ migrant or seasonal workers because they are easily located, and, typically, financially sound enough to reimburse workers for legitimate injury or damage.

The Department of Labor, however, through its interpretation and implementation of FLCRA, has reversed the congressional intent of the legislation. DOL now contends that no corporation can act "personally". Since nearly every farmer and grower of floral products does business as a corporation, the Labor Department has taken the position that anyone within that "corporation" who deals with agricultural workers must comply with FLCRA registration regulations. The result is another source of "red tape" and needless expenditure of manhours and resources which are a burden to growers of floral products and others.

SAF strongly believes that migrant or seasonal workers, and all other employees, should be treated fairly, and we believe that the changes needed in FLCRA to remedy the unnecessary and costly regulations now being enforced would not subject those workers to the risk of abuse.

We urge you, as Chairwoman of the Subcommittee on Manpower and Housing, to take the legislative steps necessary to correct the ill-advised interpretations of FLCRA by the Department of Labor.

Very truly yours,

Douglas K. Dillon

Douglas K. Dillon,
President.

68-643 O - 80 - 16

APPENDIX 3.—U.S. DEPARTMENT OF LABOR LETTERS TO MANPOWER AND HOUSING SUBCOMMITTEE RELATING TO ENFORCEMENT OF THE FARM LABOR CONTRACTOR REGISTRATION ACT

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
Wage and Hour Division
WASHINGTON, D.C. 20210

SEP 10 1979

Richard E. Grawey, Esq.
Subcommittee on Manpower and Housing
Committee on Government Operations
Rayburn House Office Building, Rm. B-349-A
Washington, D. C. 20515

Dear Mr. Grawey:

In response to your inquiry of August 9, 1979, the following information is provided on the Farm Labor Contractor Registration Act, as amended. The information is set forth in the same order as presented in your letter.

A) Certificates of Registration

1. Number issued, 1965 to present

Information available from 1972 (when the Wage and Hour Division assumed responsibility for the program) to the present. (Presented by calendar year).

	1972	1973	1974	1975	1976	1977	1978 1/	1979 2/
FLC	1,211	1,572	1,435	4,014	6,887	7,615	8,040	8,236
FLCE	161	359	357	1,449	2,852	3,995	8,118	5,159
Total	1,372	1,931	1,792	5,463	9,739	11,610	16,158	13,395

1/ The increase in registration during 1978 resulted from initial enforcement drives into the farm labor contracting activities in the seed corn industry.

2/ The 1979 statistics represent registration from January 1, 1979 through July 20, 1979. Note: Registration under FLCRA is on a calendar year basis, as set forth in the statute.

2. Denials, reasons for, 1965 to present

Information available from 1975 to present. The information is not compiled, however, by "reason". Each action is handled separately and may be based on numerous violative areas.

1975	1976	1977	1978 3/	1979 (through August 20th)
26	46	90	72	84

3. Revocations, reasons for, 1965 to present

See No. 2 above. The numbers presented under No. 2 represent final orders obtained pursuant to Section 5(b) of the Act which provides for suspension, revocation, refusal to renew, or refusal to issue a certificate of registration or employee identification card.

4. Estimate of those covered by the Act who fail to register.

The universe of farm labor contractors has never been established. It is clear that since the 1974 Amendments to the Act, significantly larger numbers of farm labor contractors are now covered. Program plans for the next two years show an estimated 20,000+ registration level.

B) Investigations for FLCRA violations

1. Number, by region, 1965 to present

Investigation statistics are available from 1974 to present. For years prior to 1978, the information was compiled nationally. A new computerized system was initiated in January 1978 which provides detailed investigation statistical data by area office, region and nationally. (Information is for fiscal years).

3/ Does not include suspension of transportation authorization.

	FY 1974	1975	1976	1977	1978	1979 4/
National:	1024	910	2398	2327	3823	3773
Regions:						
I-Boston						48
II-New York						214
III-Philadelphia						305
IV-Atlanta						858
V-Chicago						679
VI-Dallas						788
VII-Kansas City						208
VIII-Denver						82
IX-San Francisco						482
X-Seattle						109

2. Number of subpoenas issued by DOL.

   Information not available.

3. Percentage of investigations which result in a finding that FLCRA has been violated.

   Information available from 1975 forward (by fiscal year).

1975	1976	1977	1978	1979 5/
86%	67.5%	67%	70%	52%

The enforcement resource levels was doubled in FY-79. We were able to examine more agricultural areas some of which were found, at the conclusion of the investigation not covered by FLCRA. We have been working closely with local migrant legal action programs and other agencies to improve targeting of covered FLCRA activities. A more realistic violation rate may be obtained by removing the non-covered investigations. This rate would average 64.5% for FY-79.

4/ Represents investigation statistics for FY-79 from September 20, 1978 through August 20, 1979

5/ Violation rate for period from September 20, 1978 through August 20, 1979.

4. What percent of new violations are due to the actions of persons or organizations that had previously violated the Act?

   a) of repeat violators what number or percentage have requested an appeal of the previous violation which appeal has not yet been heard?

   b) of repeat violators what number or percentage have outstanding civil money penalties?

While our statistical system is not set up to collect data by "repeat violators", we are very much aware of the recidivism problem with farm labor contractors, farm labor contractor employees and users of farm labor contractors. The estimates of percentage of repeat violators vary, but may be as high as 75%.

Currently each case is handled on a separate basis. However, in the event a subsequent case arises on the same violator, the matter would be combined for appropriate action if feasible.

C) Work years budgeted for administration of FLCRA, 1965 to present, by region.

See enclosure.

1. In which regions were these allocations sufficient to visit every labor camp in the region? In what regions were these allocations not sufficient to visit every labor camp?

Inspection under housing safety and health standards for farm labor camps comes under the jurisdiction of three agencies within the Department of Labor: the Occupational Safety and Health Administration; the Employment and Training Administration; and the Employment Standards Administration. Under the Farm Labor Contractor Registration Act, the Wage and Hour Division would inspect labor camps owned or controlled by farm labor contractors. Where we have coverage and housing safety and health violations are present, the Wage and Hour Division will proceed to take steps to correct the situations.

Estimates on the number of farm labor camps range as high as 20,000. In FY-79 we will complete approximately 5,000 FLCRA investigations. We are presently working with OSHA and ETA to develop a universal listing of farm labor camps which will be available for investigation scheduling in 1980. The recently signed tri-agency agreement (copy enclosed) will allow for the broadest investigation coverage of camps by the three agencies with a minimum of duplication.

2. Does the Department of Labor have a list of all farm labor camps and farms which employ agricultural workers covered by the Act?

See C) 1.

D) List the DOL schedule of suggested fines for violations of FLCRA

1. List the 29 possible violations of FLCRA.

Enclosed is a Farm Labor Civil Money Penalty Report, WH-418, which lists the 29 violations for FLCs/FLCEs, and the 6 violations for which a grower, processor or other user may be liable and the suggested fines for each of the violations. Also see opinion letter WH-440.

2. Data on civil money penalties which became final because no appeal was requested.

a) Number and amount, by type of violation, for each year

b) Civil money penalties collected, by type of violation, each year

c) Disposition of final civil money penalties not collected

Assessments under the civil money penalty provisions of the law since January 1977, when the first penalties were levied, now total more than $2,616,375. Enclosed are copies of statistical charts showing the amount of civil money penalties assessed and the number of fines levied in each of the thirty-five (35) categories of violations of the Act, broken down by region.

Civil money penalty payments in the amount of $37,675 were received in 1977; payments totalled $131,457 in 1978; and $85,844 during the first half of 1979. Pursuant to Regulation 29 CFR 40.121, the person assessed is apprised of the right to request a hearing on the assessment determination within a specified time, and that in the absence of a request for a hearing the determination to assess shall become the final and unappealable Order of the Secretary. During 1977, a total of $79,625 in unpaid civil money penalties, representing final orders, was referred to our Regional Solicitors for collection, pursuant to 29 CFR 40.124. In 1978, the total amount collectible was $192,075 and during the first half of 1979, the collectible total was $193,025. In summary, civil money penalties collected through the first half of 1979 total $254,976 with a total of $464,725 unpaid and referred for collection. The difference between the total assessed and the amount already paid or to be collected is attributable to arrangements made with the assessees for settlement of their accounts and the cases awaiting hearings.

3. Data on civil money penalties for which an appeal was requested.

   a) Number and amount, by type of violation, for each year

   b) How many cases have been heard by administrative law judges?

      i) Disposition of these cases
      ii) Appeals to Court of Appeals

   c) How many cases have not yet been heard by an ALJ?

F) Injunctions, Damages, other court-ordered relief

Questions E) 3, F, G, and H have been referred to the General Legal Services Division, Office of the Solicitor, for response under separate cover. The Wage and Hour Division does not maintain data on the information requested.

I hope this information is useful. Please let me know if you need any further information.

Sincerely,

C. Lamar Johnson

C. Lamar Johnson
Deputy Administrator

Enclosures

Exhibit 'C'
Sep 19 1979

FLCRA Enforcement

Compliance Officers	FY 1975 [1]	FY 1976 [2]	FY 1977 [3]	FY 1978 [4]	FY 1979 [5]	FY 1980
udget positions	16	28	28	28	58	58
Planned enforcement staff yr.	8.4	19.4	20	30	46.2	46.2
Actual enforcement staff yr.	6.4	12.7	29	30	41.1	

1/ Continuing resolution level until the appropriation was passed on Dec. 7, 1974. The 10 compliance officers positions received as a supplemental in FY 1974 were not fully effective until the latter half of FY 1975 because the continuing resolution level was approved at the FY 1974 level.

2/ Continuing resolution level until the appropriation was passed on January 28, 1976. The 12 compliance officer positions received as a program increase were not fully effective until the latter part of FY 1976 because individuals could not be hired and trained until the appropriation was passed.

3/ The appropriation was passed on Sept. 30, 1976. Actual staff-years of enforcement exceeded plan due to increased emphasis on FLCRA enforcement.

4/ Does not included 30 compliance officer positions received in a 1978 supplement passed on March 7, 1978. The compliance officers could not be hired and trained to become fully effective before the end of the fiscal year.

5/ Actual from September 20, 1978 through August 20, 1979.

U.S. DEPARTMENT OF LABOR
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20210

RECEIVED

OCT 24 1979

OCT 25 1979

Richard E. Grawey, Esquire
Subcommittee on Manpower and Housing
Committee on Government Operations
Rayburn House Office Building, Rm. B-349-A
Washington, D.C. 20515

Dear Mr. Grawey:

The Wage and Hour Division has referred to our office certain questions regarding litigation under the Farm Labor Contractor Registration Act, as amended, from your letter of August 9, 1979. In response to your inquiry, the following information is provided:

E. 3). Data on civil money penalties for which an appeal was requested.

a) Number and amount, by type of violation, for each year.

The Solicitor's office does not maintain detailed data on the information requested; however, we are in the process of establishing a new computer tracking system which will enable us to keep more accurate statistics on litigation activity.

Information on contested cases referred to our office is provided below. It should be noted that the increase in caseload from 1976 to 1977 is due to the fact that civil money penalty assessments were implemented in 1977. Prior to 1977, the only contested cases involved licensing matters.

Calender Year	Contested Cases Referred Licensing	CMP	Total
1976[1/]	12	--	12
1977	19	80	99
1978	28	615	643
1979 (as of 9/79)	62	520	582

1/ We estimate that 11 contested licensing cases were referred to our office prior to calender year 1976 although statistics for this period are incomplete.

b) How many cases have been heard by Administrative Law Judges?

Once an individual requests a hearing on actions taken by the Wage and Hour Division to enforce the Act (civil money penalty assessments or licensing determinations), the case files are forwarded to the National Solicitor's Office for review and analysis. An attempt is made by the National Office to settle some cases prior to referral to the Office of Administrative Law Judges. (For example, cases involving a first investigation, minor violations and/or penalties, or where corrective steps were taken to insure future compliance.) If settlement is not appropriate and a decision is made to proceed with litigation, the cases are referred to the Office of Administrative Law Judges for purposes of scheduling a hearing. Often after a hearing is scheduled, the parties may agree to settlement of the matter prior to the hearing. We have provided below as detailed information as we maintain at this time.

Cases settled prior to referral

CY 76 - 1	CY 78 - 10
CY 77 - 7	CY 79 - 65 (as of 9/79)

Total: 83

Cases referred to the Administrative Law Judge for hearing

CY 73 - 2	CY 77 - 11
CY 75 - 1	CY 78 - 16
CY 76 - 6	CY 79 - 73 (as of 9/79)

Total: 109

i) Disposition of these cases

ii) Appeals

Hearings held - 22
Cases settled prior to hearing after referral - 50
Cases referred but not yet heard - 37

In all cases which have been heard by an Administrative Law Judge, the Department's determinations have been upheld in whole or in part. Only two Administrative Law Judge decisions have been appealed by the Respondents to the

U. S. District Courts pursuant to §§9(b)(3) and 11 of the Act. No decisions on those appeals have been issued to date.

c) How many cases have not yet been heard by the Administrative Law Judges?

As the figures demonstrate (see 3(a) above), the number of cases being forwarded to the Solicitor's Office has increased dramatically. In 1977 we received 99 cases for analysis and possible referral, in 1978, we received 643 cases and in the first nine months of 1979, we have received 582 cases. Our office is on the average receiving 60 cases per month at the present time. As a result of this relatively recent major increase in our caseload, 923 cases have not yet been analyzed or referred to the Office of Administrative Law Judges.

F. Injunctions, Damages, Other Court-Ordered Relief

1. Suits brought in U.S. District Courts by Department of Labor to enforce FLCRA, by type of violation, each year.

We have provided below as detailed information as available on the suits brought where injunctions were obtained.

1976 - 123
1977 - 64
1978 - 56
1979 - 49 (as of 9/79)

2. Disposition of suits brought by DOL, by type of violation, each year.

In the vast majority of cases filed in U.S. District Courts, injunctions have been obtained by our Regional Solicitor's Offices. Eight appeals have been filed to the Courts of Appeals to date. We have received within the past year the first two decisions since the Act was substantially amended in 1974, both of which were favorable. The remainder are pending. We are also providing in Attachment A, a list of injunctions obtained which specify the name of the individual and issues involved. This listing does not completely reflect our 1978 and 1979 injunctive activity, on which we are still compiling statistics.

G. Suits brought by farmworkers

Our office does not maintain data on the information requested. We have no way of knowing the exact number of suits brought by farmworkers since the Department of Labor is not a party to the action. In coordination efforts with Migrant Legal Services Groups, we become aware and occasionally, provide assistance in suits brought throughout the country.

H. Indicate, by type of violation, the referrals made to the Department of Justice for criminal prosecution

Referrals for criminal prosecution are presently made by our Regional Solicitor's Office to the local U.S. Attorney. Our data on these referrals is incomplete but provided below are figures on cases in which we are aware of and have monitored the criminal prosecution.

Prior to FY 79
18 cases closed - See Attachment B for disposition

Criminal Litigation - FY 79
10 cases received
7 cases analyzed
1 filed
2 referred
5 closed

We are unable at this time to provide any detailed information on the disposition of these cases since in some instances the criminal litigation process is ongoing. We would be agreeable to discuss these cases on an informal basis if necessary.

During a telephone conversation between yourself and staff attorney Ms. Laurie Rucoba of this office, you also requested information on suits brought against the Department of Labor in regard to the Farm Labor Contractor Registration Act, as amended. Our office would be happy to discuss that type of case with you so that you are aware of the problems encountered in this area. Please feel free to contact Paul E. Myerson, Counsel for Employment Standards, at (202)(523-8244).

The number of attorneys engaged in processing the case files in the National Office, including handling of appellate cases and defensive suits, has always been small. Because of the substantial increase in the number of contested cases due to increased investigation and enforcement activity, we have recognized that a new system of processing litigation files will have to be instituted. We are presently in the process of working out the details of a decentralization whereby the civil money penalty case files would go directly to one of our ten Regional offices.

I hope this information is helpful. Please let me know if our office can be of further assistance.

Carin Ann Clauss

Carin Ann Clauss
Solicitor of Labor

Attachments

ATTACHMENT B

CRIMINAL ACTIONS

NAME, COURT AND CASE NUMBER; DATE FILED	ACTIVITY	ISSUES COVERED	FINAL ORDER AND DATE THEREOF
U.S. v. Horace Dixon USDC NJ Crim. No. 74-188-MG3 D/F 10-8-74	Contractor	4(a), 6(c), 6(e), 9	$250 Fine Suspended
U.S. v. Samuel Daniels USDC NJ Crim. No. 74-537 D/F 10-9-74		4(a), 9	$250 Fine Suspended
U.S. V. Thomas Cheatham USDC NJ Crim. No. 74-184-MG3 D/F 10-9-74	Contractor	4(a), 6(a), 6(c), 6(e)	$250 Fine Suspended
U.S. v. Manuel Caez USDC NJ Crim. No. 74-192-MG3 D/F 11-6-74		4(a), 9	$250 Fine Suspended
U.S. v. Edward McElveen USDC NJ Crim. No. 74-190-MG3		4(a), 6(a), 9	$250 Fine Suspended
U.S. v. John Jordan USDC NJ Crim. No. 74-189-MG3		4(a), 6(c), 6(e)	$250 Fine Suspended
U.S. v. George Nicholson aka Perry Cook USDC NJ Crim. No. 74-187-MG3		4(a), 6(a), 6(b), 6(c), 6(e)	$250 Fine Suspended
U.S. v. Freddie Sykes USDC NJ Crim. No. 74-538 MG3 D/F 10-9-74		4(a), 6(a), 6(c), 6(e)	$250 Fine Suspended
U.S. v. Eugene Williams USDC NJ Crim. No. 74-538 MG3 D/F 10-9-74		4(a), 6(a), 6(c), 6(e)	$250 Fine Suspended
U.S. v. Sarah Brown USDC NJ Crim. No. 74-182-MG3	Contractor	4(a), 9	$250 Fine Suspended

CRIMINAL ACTIONS

NAME, COURT AND CASE NUMBER; DATE FILED	ACTIVITY	ISSUES COVERED	FINAL ORDER AND DATE THEREOF
U.S. v. Monroe (Roe) Beasley and Robert Beasley USDC MD Fla. - Tampa Div. Crim. Action No. 76-25-CR-T-H D/F 2/25/76	Contractors	Title 8 §1324(a), Title 18 § 2 Title 7 §§ 2045(f), 2048(c)	Probati 3 yea
U.S. v. Herman Bedsole USDC MD Fla. - Ocala Div. Crim. Action No. 77-4-Cr-OC D/F 2-9-77	Contractor	Title 18 §1001	1 Year Probatio
U.S. v. Tomas Beltran Diaz USDC MD Fla. - Orlando Div. C.A. No. 77-11-Orl-Cr-R D/F 2-2-77	Contractor	Title 7 §2045(f), 2048(c), 2043(a), 2048(a)	3 Years Probati $1,500 F
U.S. v. Vicente Hinojosa USDC ND Ohio WD Crim. Action No. C 77-176 D/F 4-14-77	Contractor		Dismisse 3-9-77
U.S. v. Annemarie Ortiz USDC MD Fla. - Ocala Div. Crim. Action No. 77-16-Cr-Oc D/F 11-17-77	Contractor	Title 7 §§ 2045(f), 2048(c)	2 Years Probation
U.S.A. v. Arnulfo M. Hernandez USDC MD Fla. - Ocala Div. Crim. Action No. 78-6-CR-OC D/F 3-13-78	Contractor	Title 7 §§2043(a), 2048(a), 2045(f), 2048(c)	
U.S.A. v. Jose Guadalupe Rodriquez USDC MD Fla. Orlando Div. Crim. No. 75-135-Orl-Cr-R D/F 10-31-75	Contractor	Title 7 §§ 2045(b), 2045(c), 2045(a), 2045(d), 2045(e)	3-10-76 Convicte 1 yr in prison

U. S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
WAGE AND HOUR DIVISION
1515 BROADWAY

NEW YORK, NEW YORK 10036

(212) 944-3348

REGIONAL OFFICE

November 8, 1979

Richard E. Grawey, Esq.
Subcommittee on Manpower and Housing
Committee on Government Operations
Rayburn House Office Building, Room B-349-A
Washington, DC 20515

Dear Mr. Grawey:

In response to your inquiry of September 17, 1979, the following information is provided on the Farm Labor Contractor Registration Act, as amended, for the New York Region and Southern New Jersey.

A. Certificates of Registration

1. Number issued, 1977 to present
(Presented by calendar year).

	1977	1978	1979
FLC	127	122	225
FLCE	69	77	79
TOTAL	196	199	304

2. Denials, reasons for, 1977 to present
(Presented by calendar year).

1977	1978	1979
4	0	0

The four denials resulted from incomplete applications. The applications were returned to the applicants for completion but were not re-submitted.

3. Revocations, reasons for, 1977 to present
Not applicable at the Regional level.

4. Estimate of those covered by the Act who fail to register
The universe of farm labor contractors and employees is undetermined, but based on the statistics available, the registration level has shown a dramatic increase.

B. Investigations for FLCRA violations

1. Number, 1977 to present
(Presented by fiscal year).

	1977	1978	1979
Region	150	273	450
Trenton Area Office	72	107	126

2. Number of subpoenas issued by DOL
Information not available

3. Percentage of investigations which result in a finding that FLCRA has been violated.

	1978	1979
Region	33%	39*
Trenton Area Office	19%	56

4. What percent of new violations are due to the actions of persons or organizations that had previously violated the Act?
   a. Of repeat violators, what number or percentage have requested an appeal of the previous violation which appeal has not yet been heard?
   b. Of repeat violators, what number or percentage have outstanding civil money penalties?

   This information is not available in the Region.

C. Work years budgeted for Administration of FLCRA

	1977	1978	1979
Region	1.6	1.9	3.0
Trenton Area Office	.4	.4	.4

1. Were these allocations sufficient to visit every labor camp in the Southern New Jersey area?

   The Wage and Hour Division of the Employment Standards Adminstration does not have jurisdiction over all labor camps. Under the Farm Labor Contractor Registration Act, labor camps come under the purview of Wage and Hour only where the farm labor contractor owns or controls the camps. Where this situation occurs, a housing safety and health inspection would be made. If violations were disclosed, the New York Region would take the appropriate steps to correct the situations.

2. Does the Department of Labor have a list of all farm labor camps and farms which employ agricultural workers covered by the Act?

The New York Region does not maintain a list of all farm labor camps and farms which employ agricultural workers covered by the Act for the reasons stated in (C)1.

D. Data on civil money penalties which became final because no appeal was requested.

1. See attachment

2. See attachment

3. These statistics are not maintained by the Region.

* For period 9/21/78 thru 8/20/79

Sincerely,

Raymond G. Cordelli

Raymond G. Cordelli
Assistant Regional Adminstator
Wage and Hour Division
Employment Standards Adminstration

cc: A/S Donald Elisburg
D/A Lamar Johnson
R/A Frank Mercurio

WH-417 Item No.	FY77 Assessments No.	FY77 Assessments Amount	FY77 Collections Amount	FY78 Assessments No.	FY78 Assessments Amount	FY78 Collections Amount
1	8	$5,250	$1,000	5	$3,500	
2	-	-		3	100	
3	7	550	300	16	1,000	$125
4	2	100		10	325	50
5	2	800		1	400	
6	-	-		-	-	
7	1	100	100	3	500	
8	-	-		2	100	
9	-	-		10	500	100
10	1	400	400	-	-	
11	-	-		1	200	
12	-	-		-	-	
13	5	1,600	200	10	4,000	400
14	4	700		9	1,400	200
15	3	1,200		3	600	200
16	8	6,500		8	7,000	500
17	-	-		-	-	
18	2	600	200	9	3,600	
19	-	-		-	-	
20	-	-		4	100	
21	-	-		-	-	
22	-	-		-	-	
23	-	-		-	-	
24	2	800		-	-	
25	1	400	400	-	-	
26	-	-		-	-	
27	-	-		-	-	
28	1	150		11	3,300	150
29	-	-		1	1,000	
30	7	5,000		2	1,500	1,500
31	-	-		-	-	
32	-	-		-	-	
33	-	-		-	-	
34	-	-		-	-	
35	-	-		-	-	
TOTALS	54	$24,150	$2,600	108	$29,125	$3,225

FY79

WH-417 ITEM No.	Assessments No.	Assessments Amount	Collections Amount
1	17	$5,750	$750
2	4	200	25
3	22	1,600	350
4	13	475	25
5	1	400	
6	-	-	
7	5	800	200
8	7	550	50
9	25	2,000	150
10	3	4,400	
11	2	600	
12	-	-	
13	21	7,600	1,000
14	29	4,300	400
15	1	400	
16	16	12,500	1,000
17	-	-	
18	14	5,000	800
19	1	500	
20	5	200	
21	1	50	
22	-	-	
23	-	-	
24	-	-	
25	1	400	
26	-	-	
27	1	500	
28	14	4,500	600
29	-	-	
30	9	5,500	600
31	-	-	
32	-	-	
33	1	400	
34	1	300	
35	-	-	
TOTALS	214	$58,925	$5,950

APPENDIX 4.—THE FARM LABOR CONTRACTOR REGISTRATION ACT OF 1963 AS AMENDED

Farm Labor Contractor Registration Act of 1963 As Amended

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

WH Publication 1389
Revised May 1979

FARM LABOR CONTRACTOR REGISTRATION ACT OF 1963
AS AMENDED*
(7 U.S.C. 2041 et seq.)

AN ACT – To provide for the registration of contractors of migrant agricultural workers, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Farm Labor Contractor Registration Act of 1963 as amended".

CONGRESSIONAL FINDINGS AND DECLARATION OF POLICY

SEC. 2. (a) The Congress hereby finds that the channels and instrumentalities of interstate commerce are being used by certain irresponsible contractors for the services of the migrant agricultural laborers who exploit producers of agricultural products, migrant agricultural laborers, and the public generally, and that, as a result of the use of the channels and instrumentalities of interstate commerce by such irresponsible contractors, the flow of interstate commerce has been impeded, obstructed, and restrained.

(b) It is therefore the policy of this Act to remove the impediments, obstructions, and restraints occasioned to the flow of interstate commerce by the activities of such irresponsible contractors by requiring that all persons engaged in the activity of contracting for the services of workers for agricultural employment comply with the provisions of this Act and all regulations prescribed hereunder by the Secretary of Labor.

DEFINITIONS

SEC. 3. As used in this Act—

(a) The term "person" includes any individual, partnership, association, joint stock company, trust, or corporation.

(b) The term "farm labor contractor" means any person, who, for a fee, either for himself or on behalf of another person, recruits, solicits, hires, furnishes, or transports migrant workers (excluding members of his immediate family) for agricultural employment. Such term shall not include—

(1) any nonprofit charitable organization, public or nonprofit private educational institution, or similar organization;

(2) any farmer, processor, canner, ginner, packing shed operator, or nurseryman who *personally* engages in any such activity for the purpose of supplying migrant workers solely for his own operation;

(3) any full-time or regular employee of any entity referred to in (1) or (2) above *who engages in such activity solely for his employer on no more than an incidental basis;*

(4) any person who engages in any such activity (A) solely within a twenty-five mile intrastate radius of his permanent place of residence and (B) for not more than thirteen weeks per year;

(5) any person who engages in any such activity for the purpose of obtaining migrant workers of any foreign nation for employment in the United States if the employment is subject to—

(A) an agreement between the United States and such foreign nation; or

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*The original text of the Farm Labor Contractor Registration Act of 1963 is set in the "Century" typeface. Added or amended language as enacted by subsequent amendments is represented by other typefaces as indicated below:

Amendments	*Typeface Used*	*Public Law*	*Date Enacted*	*Statute Citation*
Original	Century	88-582	9/7/64	78 Stat. 920
1974	*Century Italics*	*93-518*	*12/7/74*	*88 Stat. 1652*
1976	Century Boldface	94-259	4/5/76	90 Stat. 314
1976	" "	94-561	10/19/76	90 Stat. 2643
1978	*Century Boldface Italics*	*95-562*	*11/1/78*	*92 Stat. 2381*

(B) an arrangement with the government of any foreign nation under which written contracts for the employment of such workers are provided for and the enforcement thereof is provided for *through* the United States by an instrumentality of such foreign nation;

(6) any full-time or regular employee of any person holding a certificate of registration under this Act;

(7) any common carrier or any full-time regular employee thereof engaged solely in the transportation of migrant workers;

(8) any custom combine, hay harvesting, or sheep shearing operation;

(9) any custom poultry harvesting, breeding, debeaking, sexing, or health service operation, provided the employees of the operation are not regularly required to be away from their domicile other than during their normal working hours; or

(10) any person who would be required to register solely because the person is engaged in any such activity solely for the purpose of supplying full-time students or other persons whose principal occupation is not farmwork to detassel and rogue hybrid seed corn or sorghum for seed and to engage in other incidental farmwork for a period not to exceed four weeks in any calendar year: Provided, That such students or other persons are not required by the circumstances of such activity to be away from their permanent place of residence overnight: Provided further, That such students or other persons, if under 18 years of age, are not engaged in providing transportation in vehicles caused to be operated by the contractor.

(c) The term "fee" includes any money or other valuable consideration paid or promised to be paid to a person for services as a farm labor contractor.

(d) The term "agricultural employment" means employment in any service or activity included within the provisions of section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)), or section 3121(g) of the Internal Revenue Code of 1954 (26 U.S.C. 3121(g)) *and the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state.*

(e) The term "Secretary" means the Secretary of the United States Department of Labor or his duly authorized representative.

(f) The term "State" means any of the States of the United States, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, and Guam.

(g) The term "migrant worker" means an individual whose primary employment is in agriculture, as defined in section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)), or who performs agricultural labor, as defined in section 3121(g) of the Internal Revenue Code of 1954 (26 U.S.C. 3121(g)), on a seasonal or other temporary basis.

CERTIFICATE OF REGISTRATION REQUIRED

SEC. 4. (a) No person shall engage in activities as a farm labor contractor unless he first obtains a certificate of registration from the Secretary, and unless such certificate is in full force and effect and is in such person's immediate possession.

(b) A full-time or regular employee of any person holding a valid certificate of registration under the provisions of this Act shall not, for the purpose of engaging in activities as a farm labor contractor solely on behalf of such person, be required to obtain a certificate of registration hereunder in his own name. Any such employee shall be required to have in his immediate personal possession when engaging in such activities such identification as the Secretary may require showing such employee to be an employee of, and duly authorized to engage in activities as a farm labor contractor for, a person holding a valid certificate of registration under the provisions of this Act. Except as provided in the foregoing provisions of this subsection, any such employee shall be subject to the provisions of this Act and regulations prescribed hereunder to the same extent as if he were required to obtain a certificate of registration in his own name.

(c) No person shall engage the services of any farm labor contractor to supply farm laborers unless he first determines that the farm labor contractor possesses a certificate from the Secretary that is in full force and effect at the time he contracts with the farm labor contractor.

(d) Upon determination by the Secretary that any person knowingly has engaged the services of any farm labor contractor who does not possess such certificate as required by subsection (c) of this section, the Secretary is authorized to deny such person the facilities and services authorized by the Act of June 6, 1933 (48 Stat. 113; 29 U.S.C. 49 et seq.), commonly referred to as the Wagner-Peyser Act, for a period of up to three years.

ISSUANCE OF CERTIFICATE OF REGISTRATION

SEC. 5. (a) The Secretary shall, after appropriate investigation, issue a certificate of registration under this Act to any person who—

(1) has executed and filed with the Secretary a written application subscribed and sworn to by the applicant containing such information (to the best of his knowledge and belief) concerning his conduct and method of operation as a farm labor contractor as the Secretary may require in order effectively to carry out the provisions of this Act;

(2) has filed, within such time as the Secretary may prescribe, proof satisfactory to the Secretary of the financial responsibility of the applicant or proof satisfactory to the Secretary of the existence of a policy of insurance which insures such applicant against liability for damages to persons or property arising out of the applicant's ownership of, operation of, or his causing to be operated any vehicle for the transportation of migrant workers in connection with his business, activities, or operations as a farm labor contractor. *In no event shall the amount of such insurance be less than the amount currently applicable to vehicles used in the transportation of passengers in interstate commerce under the Interstate Commerce Act and regulations promulgated pursuant thereto, or amounts offering comparable protection to persons or property from damages arising out of the applicant's ownership of, operation of, or his causing to be operated any vehicle as provided herewith: Provided, That the Secretary shall have the discretion to issue regulations requiring insurance in the highest amounts feasible which are less than the amounts currently applicable to vehicles used in the transportation of passengers in interstate commerce under the Interstate Commerce Act and regulations promulgated pursuant thereto, if the Secretary, after due and careful consideration, determines that the insurance coverage in such amounts is not available to farm labor contractors in the same manner and in the same amounts as such coverage is available to other carriers used to transport passengers in interstate commerce;*

(3) has filed, within such time as the Secretary may prescribe, a set of his fingerprints;

(4) has filed, under such terms as the Secretary may prescribe, a statement identifying each vehicle to be used by the applicant for the transportation of migrant workers, and all real property to be used by the applicant for the housing of migrant workers, during the period for which registration is sought, along with proof that every such vehicle and all such housing currently conform to all applicable Federal and State safety and health standards to the extent that such vehicle and all such housing are under the applicant's ownership or control; and

(5) has consented to designation of the Secretary as the agent available to accept service of summons in any action against such farm labor contractor at any and all times during which such farm labor contractor has departed from the jurisdiction in which such action is commenced or otherwise has become unavailable to accept service, under such terms and conditions as are set by the court in which such action has been commenced.

(b) Upon notice and hearing in accordance with regulations prescribed by him, the Secretary may refuse to issue, and may suspend, revoke, or refuse to renew a certificate of registration to any farm labor contractor if he finds that such contractor—

(1) knowingly has made any misrepresentations or false statements in his application for a certificate of registration or any renewal thereof;

(2) knowingly has given false or misleading information to migrant workers concerning the terms, conditions, or existence of agricultural employment;

(3) has failed, without justification, to perform agreements entered into or arrangements with farm operators;

(4) has failed, without justification, to comply with the terms of any working arrangements he has made with migrant workers;

(5) has failed to show financial responsibility satisfactory to the Secretary required by subsection (a)(2) of this section or has failed to keep in effect a policy of insurance required by subsection (a)(2) of this section;

(6) has recruited, employed, or utilized, *with knowledge*, the services of *any person, who is an alien not lawfully admitted for permanent residence, or who has not been authorized by the Attorney General to accept employment;*

(7) has been convicted of any crime under State or Federal law relating to gambling or to the sale, distribution, or possession of alcoholic liquors in connection with or incident to his activities as a farm labor contractor; or has been convicted of any crime under State or Federal law involving robbery, bribery, extortion, embezzlement, grand larceny, burglary, arson, violation of narcotics laws, murder, rape, assault with intent to kill, assault which inflicts grievous bodily injury, *prostitution, or peonage; where the date of the judgment of conviction of any crime as specified herein has been entered within a period of five years preceding the action of the Secretary under this subsection;*

(8) has failed to comply with rules and regulations promulgated by the Interstate Commerce Commission that are applicable to his activities and operations in interstate commerce;

(9) knowingly employs or continues to employ any person to whom subsection (b) of section 4 of this Act applies who has taken any action, except for that listed in paragraph (5) of this subsection, which could be used by the Secretary under this subsection to refuse to issue a certificate of registration;

(10) has failed to comply with any of the provisions of this Act or any regulations issued hereunder;

(11) is not in fact the real party in interest in any such application or certificate of registration and that the real party in interest is a person, firm, partnership, association, or corporation who previously has been denied a certificate of registration, has had a certificate of registration suspended or revoked, or who does not presently qualify for a certificate of registration; or

(12) has used a vehicle for the transportation of migrant workers, or has used real property for the housing of migrant workers, while such vehicle or real property failed to conform to all applicable Federal and State safety and health standards, to the extent any such vehicle or real property has come within the ownership or control of such farm labor contractor.

(c) A certificate of registration, once issued, may not be transferred or assigned and shall be effective for the remainder of the calendar year during which it is issued, unless suspended or revoked by the Secretary as provided in this Act. A certificate of registration may be renewed each calendar year upon approval by the Secretary of an application for its renewal.

(d) Persons issued a certificate of registration under this section shall provide the Secretary a notice of each and every address change within ten days after such change. The Secretary shall maintain a public central registry of all persons issued certificates of registration under this section. Persons issued a certificate of registration under this section shall provide to the Secretary documentation required under section 5(a)(4) of the Act applicable to any vehicle which the applicant obtains for use in the transportation of migrant workers and any real property which the applicant obtains or learns will be used for the housing of migrant workers during the period for which the certificate of registration is issued, within ten days after he obtains or learns of the intended use of such vehicle or real property, to the extent that such vehicle or such real property is under the ownership or control of such persons who have been issued certificates of registration.

OBLIGATIONS AND PROHIBITIONS

SEC. 6. Every farm labor contractor shall—

(a) carry his certificate of registration with him at all times while engaging in activities as a farm labor contractor and exhibit the same to all persons with whom he intends to deal in his capacity as a farm labor contractor prior to so dealing *and shall be denied the facilities and services authorized by the Act of June 6, 1933 (29 U.S.C. 49 et seq.), upon refusal or failure to exhibit the same;*

(b) ascertain and disclose to each worker at the time the worker is recruited the following information to the best of his knowledge and belief:

(1) the area of employment,

(2) the crops and operations on which he may be employed,

(3) the transportation, housing, and insurance to be provided him,

(4) the wage rates to be paid him,

(5) the charges to be made by the contractor for his services,

(6) the period of employment,

(7) the existence of a strike or other concerted stoppage, slowdown, or interruption of operations by employees at a place of contracted employment, and

(8) the existence of any arrangements with any owner, proprietor, or agent of any commercial or retail establishment in the area of employment under which he is to receive a commission or any other benefit resulting from any sales provided to such commercial or retail establishment from the migrant workers whom he recruits.

The disclosure required under this subsection shall be in writing in a language in which the worker is fluent, and written in a manner understandable by such workers on such forms and under such terms and conditions as the Secretary shall prescribe.

(c) upon arrival at a given place of employment, post in a conspicuous place a written statement of the terms and conditions of that employment;

(d) in the event he manages, supervises, or otherwise controls the housing facilities, post in a conspicuous place the terms and conditions of occupancy;

(e) in the event he pays migrant workers engaged in agricultural employment, either on his own behalf or on behalf of another person, keep payroll records which shall show for each worker total earnings in each payroll period, all withholdings from wages, and net earnings. In addition, for workers employed on a time basis, the number of units of time employed and the rate per unit of time shall be recorded on the payroll records, and for workers employed on a piece rate basis, the number of units of work performed and the rate per unit shall be recorded on such records. In addition he shall provide to each migrant worker engaged in agricultural employment with whom he deals in a capacity as a farm labor contractor a statement of all sums paid to him (including sums received on behalf of such migrant worker) on account of the labor of such migrant worker. He shall also provide each such worker with an itemized statement showing all sums withheld by him from the amount he received on account of the labor of such worker, and the purpose for which withheld. *He shall additionally provide to the person to whom any migrant worker is furnished all information and records required to be kept by such contractor under this subsection, and all information required to be provided to any migrant worker under this subsection. The Secretary may prescribe appropriate forms for the recording of information required by this subsection;*

(f) refrain from recruiting, employing, or utilizing, with knowledge, the services of any person, who is an alien not lawfully admitted for permanent residence or who has not been authorized by the Attorney General to accept employment;

(g) promptly pay or contribute when due to the individuals entitled thereto all moneys or other things of value entrusted to the farm labor contractor by any farm operator for such purposes; and

(h) refrain from requiring any worker to purchase any goods solely from such farm labor contractor or any other person.

AUTHORITY TO OBTAIN INFORMATION

SEC. 7. The Secretary or his designated representative may investigate and gather data with respect to matters which may aid in carrying out the provisions of this Act. In any case in which a complaint has been filed with the Secretary regarding a violation of this Act or with respect to which the Secretary has reasonable grounds to believe that a farm labor contractor has violated any provisions of this Act, the Secretary or his designated representative may investigate and gather data respecting such case, and may, in connection therewith, enter and inspect such places and such records (and make such transcriptions thereof), question such persons, and investigate such facts, conditions, practices, or matters as may be necessary or appropriate to determine whether a violation of this Act has been committed. *The Secretary may issue subpenas requiring the attendance and testimony of witnesses or the production of any evidence in connection with such investigations. The Secretary may administer oaths and affirmations, examine witnesses, and receive evidence. For the purpose of any hearing or investigation provided for in this chapter, the provisions of sections 9 and 10 of the Federal Trade Commission Act of September 16, 1914 (15 U.S.C. 49, 50) (relating to the attendance of witnesses and the production of books, papers, and documents), are made applicable to the jurisdiction, powers, and duties of the Secretary. The Secretary shall conduct investigations in a manner which protects the confidentiality of any complainant or other party who provides information to the Secretary with respect to which the Secretary commences an investigation. The Secretary shall monitor and investigate activities of farm labor contractors in such manner as is necessary to enforce the provisions of this Act.*

AGREEMENTS WITH FEDERAL AND STATE AGENCIES

SEC. 8. The Secretary is authorized to enter into agreements with Federal and State agencies, to utilize (pursuant to such agreements) the facilities and services of the agencies, and to delegate to the agencies such authority, other than rulemaking, as he deems necessary in carrying out the provisions of this Act, and to allocate or transfer funds or otherwise to pay or to reimburse such agencies for expenses in connection therewith.

PENALTY PROVISIONS

SEC. 9. (a) Any farm labor contractor or employee thereof who willfully and knowingly violates any provision of this Act shall be fined not more than $500, *sentenced to a prison term not to exceed one year, or both, and upon conviction for any subsequent violation, shall be punishable by a fine not to exceed $10,000 or sentenced to a prison term not to exceed three years, or both. The Secretary shall report on enforcement of the provisions of this Act in the annual report of the Secretary required pursuant to section 9 of the Act entitled "An Act to create a Department of Labor", approved March 4, 1913 (37 Stat. 738, 29 U.S.C. 560). The reporting hereunder shall include, but shall not be limited to, a description of efforts to monitor and investigate the activities of farm labor contractors, the number of persons to whom certificates of registration have been issued, the number of complaints of violation received by the Secretary and their disposition, and the number and nature of any sanctions imposed.*

(b) (1) Any person who commits a violation of this Act or any regulations promulgated under this Act, may be assessed a civil money penalty of not more than $1,000 for each violation. The penalty shall be assessed by the Secretary upon written notice, under the procedures set forth herein.

(2) The person assessed shall be afforded an opportunity for agency hearing, upon request made within thirty days after the date of issuance of the notice of assessment. In such hearing, all issues shall be determined on the record pursuant to section 554 of title 5, United States Code. The agency determination shall be made by final order subject to review only as provided in paragraph (3). If no hearing is requested as herein provided, the assessment shall constitute a final and unappealable order.

(3) Any person against whom an order imposing a civil money penalty has been entered after an agency hearing under this section may obtain review by the United States district court for any district in which he is located or the United States District Court for the District of Columbia by filing a notice of appeal in such court within thirty days from the date of such order, and simultaneously sending a copy of such notice by registered mail to the Secretary. The Secretary shall promptly certify and file in such court the record upon which the penalty was imposed. The findings of the Secretary shall be set aside if found to be unsupported by substantial evidence as provided by section 706(2)(E) of title 5, United States Code.

(4) If any person fails to pay an assessment after it has become a final and unappealable order, or after the court has entered final judgment in favor of the agency, the Secretary shall refer the matter to the Attorney General, who shall recover the amount assessed by action in the appropriate United States district court. In such action the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

(5) All penalties collected under authority of this section shall be paid into the Treasury of the United States.

(c) Notwithstanding subsections (a) and (b) of this section, any farm labor contractor who commits a violation of subsection 6(f) of the Act or any regulations promulgated thereunder shall upon conviction be fined not to exceed $10,000 or sentenced to a prison term not to exceed three years, or both, if the person committing such violation has failed to obtain a certificate of registration pursuant to this Act or is one whose certificate has been suspended or revoked by the Secretary.

APPLICABILITY OF ADMINISTRATIVE PROCEDURE ACT

SEC. 10. The provisions of the Administrative Procedure Act (5 U.S.C. 1001 and the following) shall apply to all administrative proceedings conducted pursuant to the authority contained in this Act.

JUDICIAL REVIEW

SEC. 11. Any person aggrieved by any order of the Secretary in refusing to issue or renew, or in suspending or revoking, a certificate of registration may obtain a review of any such order by filing in the district court of the United States for the district wherein such person resides or has his principal place of business, or in the United States District Court for the District of Columbia, and serving upon the Secretary, within thirty days after the entry of such order, a written petition praying that the order of the Secretary be modified or set aside in whole or in part. Upon receipt of any such petition, the Secretary shall file in such court a full, true, and correct copy of the transcript of the proceedings upon which the order complained of was entered. Upon the filing of such petition and receipt of such transcript, such court shall have jurisdiction to affirm, set aside, modify, or enforce such order, in whole or in part. In any such review, the findings of fact of the Secretary shall not be set aside if supported by substantial evidence. The judgment and decree of the court shall be final, subject to review as provided in sections 1254 and 1291 of title 28, United States Code.

CIVIL RELIEF

SEC. 12. (a) Any person claiming to be aggrieved by the violation of any provision of this Act or any regulation prescribed hereunder may file suit in any district court of the United States having jurisdiction of the parties without respect to the amount in controversy or without regard to the citizenship of the parties and without regard to exhaustion of any alternative administrative remedies provided herein.

(b) Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action. If the court finds that the respondent has intentionally violated any provision of this Act or any regulation prescribed hereunder, it may award damages up to and including an amount equal to the amount of actual damages, or $500 for each violation, or other equitable relief. Any civil action brought under this section shall be subject to appeal as provided in chapter 83 of title 28, United States Code.

(c) If upon investigation the Secretary determines that the provisions of this Act have been violated, he may petition any appropriate district court of the United States for temporary or permanent injunctive relief.

(d) Except as provided in section 518(a) of title 28, United States Code, relating to litigation before the Supreme Court, the Solicitor of Labor may appear for and represent the Secretary in any civil litigation brought under this Act but all such litigation shall be subject to the direction and control of the Attorney General.

DISCRIMINATION PROHIBITED

SEC. 13. (a) No person shall intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against any migrant worker because such worker has, with just cause, filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act or has testified or is about to testify in any such proceedings or because of the exercise, with just cause, by such worker on behalf of himself or others of any right or protection afforded by this Act.

(b) Any worker who believes, with just cause, that he has been discriminated against by any person in violation of this section may, within one hundred eighty days after such violation occurs, file a complaint with the Secretary alleging such discrimination. Upon receipt of such complaint, the Secretary shall cause such investigation to be made as he deems appropriate. If upon such investigation, the Secretary determines that the provisions of this section have been violated, he shall bring an action in any appropriate United States district court against such person. In any such action, the United States district courts shall have jurisdiction, for cause shown, to restrain violation of subsection (a) and order all appropriate relief including rehiring or reinstatement of the worker, with back pay, or damages.

RECORDKEEPING

SEC. 14. Any person who is furnished any migrant worker by a farm labor contractor shall maintain all payroll records required to be kept by such person under Federal law, and with respect to migrant workers paid by a farm labor contractor such person shall also obtain from the contractor and maintain records containing the information required to be provided to him by the contractor under section 6(e) of the Act.

STATE LAWS AND REGULATIONS

SEC. 15. This Act and the provisions contained herein are intended to supplement State action and compliance with this Act shall not excuse anyone from compliance with appropriate State law and regulation.

SEVERABILITY

SEC. 16. If any provision of this Act, or the application thereof to any person or circumstance, shall be held invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby.

RULES AND REGULATIONS

SEC. 17. The Secretary is authorized to issue such rules and regulations as he determines necessary for the purpose of carrying out the provisions of this Act.

WAIVER OF RIGHTS

SEC. 18. Any agreement by an employee purporting to waive or to modify his rights hereunder shall be void as contrary to public policy, except a waiver or modification of rights or obligations hereunder in favor of the Secretary shall be valid for purposes of enforcement of the provisions of the Act.

AUTHORIZATION OF APPROPRIATIONS

SEC. 19. There are authorized to be appropriated to carry out the purposes of this Act such sums as may be necessary for the effective enforcement of this Act.

Legislative History (Public Law 88-582):
House Report No. 358 accompanying H.R. 6242 (Comm. on Education and Labor).
Senate Report No. 202 (Comm. on Labor and Public Welfare).
Congressional Record:
Volume 109 (1963): June 11, considered and passed Senate.
Volume 110 (1964): Aug. 17, considered and passed House, amended, in lieu of H.R. 6242.
Aug. 21, Senate agreed to House amendment.
Legislative History (Public Law 93-518):
House Report No. 93-1493 accompanying H.R. 17474 (Comm. on Education and Labor).
Senate Report No. 93-1295 (Comm. on Labor and Public Welfare).
Congressional Record, Vol. 120 (1974):
Nov. 22, considered and passed Senate.
Nov. 26, considered and passed House.
Weekly compilation of Presidential Documents, Vol. 10, No. 50
Dec. 9, Presidential statement.
Legislative History (Public Law 94-259):
House Report No. 94-441 (Comm. on Agriculture).
Senate Report No. 94-706 (Comm. on Agriculture and Forestry).
Congressional Record:
Vol. 121 (1975): Nov. 7, considered and passed House.
Vol. 122 (1976): Mar. 23, considered and passed Senate, amended.
Mar. 24, House concurred in Senate amendments.
Weekly compilation of Presidential Documents:
Vol. 12, No. 15 (1976): Apr. 5, Presidential statement.
Legislative History (Public Law 94-561):
House Report No. 95-1620, accompanying H.R. 13845 (Comm. on Agriculture).
Senate Report No. 95-1156 (Comm. on Agriculture, Nutrition, and Forestry).
Congressional Record, Vol. 124 (1978):
Sept. 8, considered and passed Senate.
Oct. 3, 4, H.R. 13854 considered and passed House; passage vacated and S. 976 amended, passed in lieu.
Oct. 13, Senate concurred in House amendments with an amendment.
Oct. 13, House concurred in Senate amendment.

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